

COGR Forum IV Adapting to Change: Policy Shifts & Research Impact

August 20,
2025



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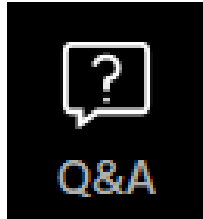
Today's Agenda:

- ***HHS Grant Terminations 2.0: The Agency's New Legal Strategy & How Institutions Should Prepare***
- ***Current Issues Briefing***, including latest developments & legal updates, F&A Reimbursement Caps, Bayh-Dole Compliance Investigation, Executive Order on Grantmaking, & NIH Other Support Training Requirement
- ***Issues Forum***: Topics & Questions from the Membership
- ***Closing Remarks & Reminders***

COGR Forum IV: Multiple Ways to Engage



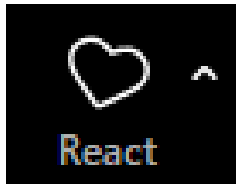
Q&A: Use the QA function (bottom center) to ask questions. Do not use the chat window to ask questions of the panelists.



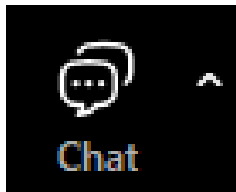
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This session is not being recorded.

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2024-2025

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HHS Grant Terminations 2.0: The Agency's New Legal Strategy & How Institutions Should Prepare

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HHS Grant Terminations 2.0: The Agency's New Legal Strategy and How Institutions Should Prepare

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COGR Forum IV: Adapting to Change, Policy Shifts & Research Impact

August 20, 2025

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Disclaimer

This presentation is provided for informational purposes only and is not intended and should not be construed to constitute legal advice. Please consult your attorneys in connection with any fact-specific situation under federal, state, and/or local laws that may impose additional obligations on you and your institution.

Agenda



1. Status of HHS Grant Terminations and Related Legal Challenges

- i. *American Public Health Association, et al. v. National Institutes of Health, et al.*, No. 1:25-CV-10787, D. Mass. (July 2, 2025) & *Commonwealth of Massachusetts, et al. v. Kennedy, et al.*, No. 1:25-CV-10814, D. Mass. (July 2, 2025)
- ii. *Thakur v. Trump*, No. 25-CV-04737-RFL, N.D. Cal. (June 23, 2025)
- iii. *American Association of Physicians for Human Rights, Inc. et al. v. National Institutes of Health, et al.*, No. 25-cv-01620-LKG, D. Md. (Aug. 14, 2025)

2. Overview of HHS's New Internal Legal Playbook for Terminations

3. Action Items for Institutions

4. Emerging Compliance Challenges

- i. New Standard Terms of NIH Awards: Gender Ideology and DEI
- ii. NIH Closeout Timelines

Status of Grant Terminations and Related Legal Challenges

- After a turbulent start to the year for federally funded research marked by abrupt and mass termination of research grants, some hope was kindled within the research community following several (albeit temporary for now) court victories in lawsuits challenging the legality of these terminations:
 - *APHA, et al. v. NIH, et al.*, No. 1:25-CV-10787, D. Mass. (July 2, 2025) & *Commonwealth of Massachusetts, et al. v. Kennedy, et al.*, No. 1:25-CV-10814, D. Mass. (July 2, 2025)
 - U.S. district court – District of Massachusetts; Judge William G. Young.
 - Plaintiffs claimed the implementation of certain Executive Orders by NIH constituted a violation of the Administrative Procedures Act (“APA”), statutory law, and the Constitution.
 - Court consolidated the two cases and merged the preliminary injunction hearing and trial on the merits. Trial was divided into two phases: *Phase One* (arbitrary and capricious claims and related statutory and constitutional claims) and *Phase Two* (APA delay claims). Phase Two is currently under advisement.
 - Re Phase One, Court ruled in favor of plaintiffs; held that the plaintiffs’ grant terminations *and* the challenged agency directives on which they were based **(a) violated the APA by being (i) arbitrary and capricious, and (ii) contrary to law**, and **(b) are deemed of no effect, void, illegal, set aside and vacated**.
 - Defendants have appealed on the merits and appealed the District Court’s and U.S. Court of Appeals’ denials of their request for a stay to the U.S. Supreme Court.

Status of Grant Terminations and Related Legal Challenges

- *Thakur v. Trump*, No. 25-CV-04737-RFL, N.D. Cal. (June 23, 2025)
 - U.S. district court – District of California; Judge Rita F. Lin.
 - Plaintiffs, six University of California (“UC”) researchers, claimed mass termination of their grants pursuant to certain Executive Orders violated the: (i) Constitution (the separation of powers), (ii) First Amendment (discrimination), (iii) Fifth Amendment (due process clause & void for vagueness), and (iv) APA.
 - Plaintiffs sought preliminary injunctive relief.
 - Court issued a preliminary injunction to the plaintiffs *and to similarly situated classes of UC researchers* and *ordered the restoration and reinstatement of the affected grants*, because the court found:
 - (a) the plaintiffs were likely to succeed on their claims that certain grant terminations **violated the First Amendment** and **the APA by being contrary to law**, and other grant terminations **violated the APA by being arbitrary and capricious**,
 - (b) the plaintiffs demonstrated that irreparable injury is likely in the absence of an injunction, and
 - (c) the balance of equities and the public interest strongly favor the entry of a preliminary injunction.
 - Defendants’ request for a stay pending appeal was denied by Judge Lin. Defendants then appealed the district court’s decision on the merits to the U.S. Court of Appeals.
 - August 12, 2025: Court issued an order in response to UCLA grant “suspensions” carried out by NSF on July 30. Order (i) confirmed NSF’s actions violated the preliminary injunction, and (ii) vacated the suspensions.

Status of Grant Terminations and Related Legal Challenges

- *American Association of Physicians for Human Rights, Inc. et al. v. NIH, et al.*, No. 25-cv-01620-LKG, D. Md. (Aug. 1, 2025)
 - U.S. district court – District of Maryland; Judge Lydia Kay Griggsby.
 - Plaintiffs claimed that certain NIH directives and actions, which resulted in the termination of their research grants and the exclusion of new grant application because of grants’ relationship to LGBTQI+ health topics, violated: (i) Fifth Amendment, (ii) Section 1557 of the Affordable Care Act (“ACA”) (Protecting Individuals Against Sex Discrimination), and (iii) APA.
 - Plaintiffs sought preliminary injunctive relief.
 - Court issued a preliminary injunction after holding that:
 - (a) the plaintiffs were likely to succeed on their claims that certain NIH directives and actions **violated Section 1557 of the ACA and Equal Protection component of the Due Process Clause of Fifth Amendment***,
 - (b) the plaintiffs demonstrated that irreparable injury is likely in the absence of an injunction, and
 - (c) the balance of equities and the public interest strongly favor the entry of a preliminary injunction.

***Notably, the court found that plaintiffs had not established that the court possessed subject-matter jurisdiction to consider their APA claims – recognizing the complicated interplay between the Tucker Act (i.e., the rule that jurisdiction over government contract disputes exceeding \$10,000 lies exclusively in the U.S. Court of Federal Claims, which cannot issue an injunction) and APA claims.**

Status of Grant Terminations and Related Legal Challenges

- These legal challenges were all brought in federal district court. A looming issue on appeal is [jurisdiction](#). Should the claims have been brought in the U.S. Court of Federal Claims?
 - *See State of New York v. National Science Foundation*, No. 1:25-cv-04452, S.D. New York (Aug. 1, 2025)
- Following the court orders, certain federal agencies (e.g., NIH) ceased new terminations of politically sensitive grant and HHS outlined a more cautious and legally rigorous strategy for canceling research deemed out of step with Trump administration priorities: [HHS's New Internal Legal Playbook for Terminations](#).



Status of Grant Terminations and Related Legal Challenges

■ Additional Developments Post Court Victories

- August 5, 2025, U.S. Government Accountability Office issues report, “Department of Health and Human Services—National Institutes of Health—Application of Impoundment Control Act to Availability of Funds for Grants.”
 - Concludes NIH violated Impoundment Control Act (“ICA”) by withholding funds from obligation and expenditure.
- August 7, 2025, White House issues Executive Order 14332, “Improving Oversight of Federal Grantmaking.”
 - Currently, termination of HHS grants governed by HHS regulations at 45 C.F.R. 75; allows HHS agencies to terminate awards (1) for failure to comply with federal statutes, regulations, or the terms and conditions of the award, (2) “for cause,” or (3) with recipient consent.
 - Starting October 1, 2025, terminations will be subject to OMB’s government-wide regulations (“Uniform Guidance”) at 2 C.F.R. 200; will allow HHS agencies to terminate awards (1) for failure to comply with federal statutes, regulations, or the terms and conditions of the award, (2) **for non-alignment with program goals or agency priorities**, or (3) with consent of recipient, *provided that the recipient is put on notice by accepting an award containing these provisions*.
 - EO’s Sections 5(a) and 6(b) calls for the revision of Uniform Guidance & grant terms and conditions to allow federal agencies to terminate grants **“for convenience, including when the award no longer advances agency priorities or the national interest.”**

HHS's New Internal Legal Playbook for Terminations

Overview

- June 25, 2025 guidance from the Office of the General Counsel (“OGC”) at HHS; obtained by STAT reporter; outlines new legal advisory process & advice to staffers on justifications for terminations that could make terminations *less* susceptible to court challenges.
- Explains upcoming October 1, 2025, regulatory change with respect to HHS grant terminations.
 - 45 C.F.R. 75 vs. 2 C.F.R 200.340
- Recommends that agencies and staffers:
 - Part 1: Run Legal Conflicts Check with OGC
 - Recognition that award cannot be terminated for reasons that would conflict with federal statutes or the Constitution.
 - OGC to advise on litigation risk prior to any proposed termination.
 - Part 2: Run Court Orders Check with OGC
 - Proposed terminations should be reviewed for compliance with court orders, including preliminary injunctions.
 - OGC to assist in advising on the status of current court orders.
 - Part 3: Build an Administrative Record
 - Agencies to thoroughly document termination decision in a memorandum and explain the bases for termination in a termination letter to be sent to recipient. Should reflect that agency evaluated the specific grant at issue, considered relevant facts, and made decision based on that review with explanation.

HHS's New Internal Legal Playbook for Terminations

Termination Options

- **Option I: 2 C.F.R. 200 termination for non-alignment with agency priorities (before October 1, 2025)**
 - Legal Authority: Contractual (pursuant to the terms of the award). Based on the recipient's draw down of funds as acceptance of an award's terms and conditions containing the 2 C.F.R. 200.340 termination provisions.
 - HHS Appeal Required: NO**
 - Legal Risk: VERY HIGH (NEARLY GUARANTEED TO BE OVERTURNED)
 - HHS Commentary:
 - These terminations carry extremely high legal risk and are nearly guaranteed to be overturned by a court.
 - Since the legally allowable reasons for terminations are already provided for by the regulation in 45 C.F.R. 75, courts will very likely conclude that any conflicting contractual provision in an award cannot override the operative regulation.

**HHS noted that although agencies are not required under this option to provide recipients with a right to appeal, they recognized that it may be beneficial to nevertheless provide an appeal option as it may help the agency counter due process arguments by recipient.

HHS's New Internal Legal Playbook for Terminations

Termination Options

■ Option II: 45 C.F.R. 75 termination “for cause” (before October 1, 2025)

- Legal Authority: 45 C.F.R. 75.372(a)(2)
- HHS Appeal Required: YES**
- Legal Risk: HIGH (BUT MAY BE MITIGATED)
- HHS Commentary:
 - Acknowledgement that it is not clear (i) whether “for cause” can constitute conduct other than non-compliance, and (ii) what level of cause will courts require to uphold a “for cause” termination.
 - Further acknowledgment that HHS and OMB have interpreted the “for cause” provision to mean something similar to termination for non-compliance under 45 C.F.R. 75.372(a)(1) (i.e., in 85 Fed. Reg. 49506, 49507-08), and thus a sudden reversal in position without sufficient explanation may not be upheld by courts.
 - HHS’s position is that although arguments can be made for “for cause” terminations that are unrelated to recipient's conduct or compliance, courts will likely interpret “for cause” to require some evidentiary level of cause that is higher than a simple non-alignment with agency priorities.
 - To increase likelihood of a “for cause” termination being upheld, HHS advised agencies to build an evidentiary basis in the administrative record to support reason for termination and in doing so not provide reasons that may be viewed as illegitimate or pretextual.

**HHS noted that although agencies are not required under this option to provide recipients with a right to appeal, they recognized that it may be beneficial to nevertheless provide an appeal option as it may help the agency counter due process arguments by recipient.

HHS's New Internal Legal Playbook for Terminations

Termination Options

- Option III: 2 C.F.R. 200 termination for non-alignment with agency priorities (after October 1, 2025)
 - Legal Authority: 2 C.F.R. 200.340(a)(4)
 - HHS Appeal Required: NO
 - Legal Risk: LOW TO MEDIUM
 - HHS Commentary:
 - Agencies must insert a version of the following two terms into any new awards issued to satisfy the requirement that the agency “clearly and unambiguously specify all termination provisions in the terms and conditions of the federal award.”

Applicable Regulatory Provisions. Prior to October 1, 2025, this award is subject to 45 C.F.R. 75 except for eight flexibilities from 2 C.F.R. 200 adopted by HHS on October 1, 2024. After October 1, 2025, this award will be subject to any applicable provisions of 2 C.F.R. 200 and 2 C.F.R. 300.

Termination. Prior to October 1, 2025, this award is subject to the termination provisions at 45 C.F.R. 75.372. Starting on October 1, 2025, this award is subject to the termination provisions at 2 C.F.R. 200.340. Pursuant to 2 C.F.R. 200.340, the recipient agrees by accepting this award that continued funding for the award is contingent upon the availability of appropriated funds, recipient satisfactory performance, compliance with the Terms and Conditions of the award, and a decision by the agency that the award continues to effectuate program goals or agency priorities.

- Legal risk may be mitigated by (i) HHS and/or agencies developing and making public its program goals and agency priorities, and (ii) offering recipient opportunity to amend scope of award to better align with agency priorities prior to termination.

HHS's New Internal Legal Playbook for Terminations

Termination Options

- **Option IV**: 45 C.F.R. 75 or 2. C.F.R. 200 termination for non-compliance with the terms and conditions of the award
 - Legal Authority: **Before** October 1, 2025: 45 C.F.R. 75.372(a)(1); **After** October 1, 2025: 2 C.F.R. 200.340(a)(1)
 - HHS Appeal Required: YES
 - Legal Risk: LOW
 - HHS Commentary:
 - Reminder that awarding agencies are required to try to improve recipient compliance through imposing specific conditions for corrective action. However, if these conditions are unsuccessful at improving recipient compliance or agency determines that non-compliance cannot be remedied by imposing specific conditions, the agency can terminate award.
 - Legal risk may be mitigated by the agency sufficiently documenting and justifying its action, particularly when agency unilaterally determines that non-compliance cannot be remedied by imposing specific conditions.

HHS's New Internal Legal Playbook for Terminations

Termination Options

■ Option V: 45 C.F.R. 75 or 2. C.F.R. 200 termination with consent of the recipient

- Legal Authority: **Before** October 1, 2025: 45 C.F.R. 75.372(a)(3) and (4); **After** October 1, 2025: 2 C.F.R. 200.340(a)(2) and (3)
- HHS Appeal Required: NO
- Legal Risk: LOW
- HHS Commentary:
 - Recipient and awarding agency must agree on termination conditions, including effective date of termination.
 - Agency should work with recipient to ensure sufficient written documentation of recipient's and agency's decision before beginning the closeout process.
 - Agency should be cautious not to take actions that could be deemed coercive to recipient; can discuss budget and workplan modifications to align with agency priorities, but should not require recipient to make such modifications as a condition to avoid termination.

Action Items for Institutions

Category 1: Already-Terminated Grants

- If already appealed or requested reconsideration, consider filing a supplemental letter referencing the recent court rulings to request prompt reinstatement of the grant.
 - Acknowledge that caselaw may not be directly binding, but also highlight that there is no material factual or legal distinction between the terminations the Courts determined to be illegal/void and the termination at hand.
- If no action has been taken yet, consider submitting a request for reconsideration.
- Consider proactively proposing (or at least planning for) modifications.
- Continue to closely monitor related litigation on appeal.

Category 2: Already-Submitted Grant Applications (pending due to agency delays or inaction)

- Continue to closely monitor Phase II-related litigation and consider submitting to the agency a letter to highlight relevant court rulings.
- Think through the option of pulling application and resubmitting to another funding opportunity.

Action Items for Institutions

Category 3: Surviving Grants (including certain reinstated grants)

What to expect:

- **Before October 1, 2025:** Although NIH is reportedly reviewing grants and programs now, probably not likely to be significant new HHS termination activity on the basis of “agency priorities”; renegotiation more likely; possibility of terminations “for cause.”
- **As of/after October 1, 2025:** Likely new wave of “**agency priorities**” terminations. However, any new terminations:
 - **Must** be preceded by revised terms and conditions of awards “clearly and unambiguously specify[ing]” the agency’s ability to terminate on this ground (2 C.F.R. 200.340(b)).
 - **May** be preceded by new public articulation of agency’s goals and priorities. *See, e.g.,* NIH Statement “Advancing NIH’s Mission Through a Unified Strategy” (August 15, 2025), articulating a non-exhaustive list of NIH priorities.
 - **May** be preceded by opportunity for grantee to modify/renege award to avoid termination.
 - **Are likely** to be accompanied by detailed, individualized agency documentation of the rationale(s) for termination.
- **At some point:** As directed by Sections 5(a) and 6(b) of Executive Order 14332 (August 7, 2025), revision of the Uniform Guidance and grant terms and conditions to allow federal agencies to terminate grants “**for convenience, including when the award no longer advances agency priorities or the national interest.**”

Action Items for Institutions

Category 3: Surviving Grants (including certain reinstated grants)

How to prepare for “HHS Terminations 2.0”:

- Inventory active grants and identify those most likely to be targeted for non-alignment with agency priorities.
 - Note: For now, NIH appears to be distinguishing some research examining “health disparities” from “DEI,” and distinguishing some research addressing health issues in gender diverse populations from “support[ing] gender identity activities” or gender ideology. NIH Statement “Advancing NIH’s Mission Through a Unified Strategy” (August 15, 2025) discusses health disparities research in particular.
- For high-risk grants, consider proactively proposing (or at least planning for) modifications.
- Line up arguments why termination based on “agency priorities” is not legally supportable, e.g.:
 - Unless/until Uniform Guidance is revised, regulatory history for “agency priorities” basis for termination indicates limited intended use for that basis.
 - *See, e.g.*, 85 Fed. Reg. 49506, 49507-49510 (Aug. 13, 2020); *State of New Jersey, et al. v. U.S. Office of Management and Budget, et al.*, No. 1:25-CV-11816, D. Mass. (June 24, 2025).
 - “Agency priorities” basis for termination is only available if contemplated in terms of award.
 - Challenge the merits of the agency’s provided rationale for why a grant is not aligned with agency priorities.

Action Items for Institutions

Category 3: Surviving Grants (including certain reinstated grants)

How to prepare for “HHS Terminations 2.0”:

- If Uniform Guidance is revised to include a “convenience” basis for termination, such terminations may be harder to challenge.
 - Submit comments on any proposed regulatory change if given opportunity (probably unlikely).
 - Even if regulatory change is adopted, “convenience” basis for termination will only be available if clearly contemplated in terms of award.
- Evaluate risk of terminations for non-compliance with (new) grant terms and conditions.

Emerging Compliance Challenges

New Standard Term of NIH Awards: Gender Ideology

- New gender ideology term of awards appeared in revised NOAs as of mid-late April 2025 (disappeared early May and reappeared mid-May):

Recipient is compliant with Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. §§ 1681 et seq., including the requirements set forth in Presidential Executive Order 14168 titled Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government, and Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d et seq., and Recipient will remain compliant for the duration of the Agreement.

- The above requirements are conditions of payment that go the essence of the Agreement and are therefore material terms of the Agreement.
- Payments under the Agreement are predicated on compliance with the above requirements, and therefore Recipient is not eligible for funding under the Agreement or to retain any funding under the Agreement absent compliance with the above requirements.
- Recipient acknowledges that this certification reflects a change in the government's position regarding the materiality of the foregoing requirements and therefore any prior payment of similar claims does not reflect the materiality of the foregoing requirements to this Agreement.
- Recipient acknowledges that a knowing false statement relating to Recipient's compliance with the above requirements and/or eligibility for the Agreement may subject Recipient to liability under the False Claims Act, 31 U.S.C. § 3729, and/or criminal liability, including under 18 U.S.C. §§ 287 and 1001.

Emerging Compliance Challenges

New Standard Term of NIH Awards: Gender Ideology

- Executive Order 14168 (January 20, 2025):
 - Executive branch will no longer recognize gender identity in interpreting/enforcing federal laws.
 - Section 3: **Requires executive actions** regarding protection of men and women as biologically distinct sexes, including use of “sex” and not “gender” in federally issued documents, records, policies, and regulations
 - (e) **Federal agencies** must remove and cease statements, policies, regulations, forms, communications and other messaging that promote gender identity; ensure that forms limit sex to male or female and do not request gender identity; and **“take all necessary steps, as permitted by law, to end the Federal funding of gender ideology”**
 - (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.**” *[was enjoined as applied to HHS grantees providing gender-affirming care to adolescents but otherwise still stands]*
 - Section 4: **Requires executive actions** regarding privacy in intimate spaces, e.g., prisons, shelters, bathrooms.
 - Section 5: **Requires executive actions** regarding enforcement of rights to single-sex spaces in workplaces and federally funded entities.
 - Section 6: **Requires executive action** to present a proposed bill codifying sex-based definitions.
 - Section 7: **Requires executive action** to update the President on compliance with the EO, including on agency-imposed requirements on federally funded entities implemented to achieve the policy of the EO.

Emerging Compliance Challenges

New Standard Term of NIH Awards: Gender Ideology

- Requires grantee acknowledgement of materiality of the term – sets up potential False Claims Act liability:

Recipient is compliant with Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. §§ 1681 et seq., including the requirements set forth in Presidential Executive Order 14168 titled Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government, and Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d et seq., and Recipient will remain compliant for the duration of the Agreement.

- The above requirements are conditions of payment that go the essence of the Agreement and are therefore material terms of the Agreement.
- Payments under the Agreement are predicated on compliance with the above requirements, and therefore Recipient is not eligible for funding under the Agreement or to retain any funding under the Agreement absent compliance with the above requirements.
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- Recipient acknowledges that a knowing false statement relating to Recipient's compliance with the above requirements and/or eligibility for the Agreement may subject Recipient to liability under the False Claims Act, 31 U.S.C. § 3729, and/or criminal liability, including under 18 U.S.C. §§ 287 and 1001.

Emerging Compliance Challenges

New Standard Term of NIH Awards: Gender Ideology

- HHS Legal Playbook:
 - Reminds agencies that compliance with federal anti-discrimination laws, as certified in HHS Form 690, “is a **material** term of the government’s payment decisions **for purposes of [the False Claims Act].**”
- Department of Justice Civil Rights Fraud Initiative (May 19, 2025):
 - DOJ will “aggressively” investigate and pursue claims against grantees that falsely certify compliance with federal civil rights laws, including Title VI and Title IX.
 - Includes examples of violations related to gender identity, including allowing men into women’s bathrooms and requiring women to compete against men in athletics.
 - “Strongly encourages” whistleblower lawsuits.

Emerging Compliance Challenges

New Standard Term of NIH Awards: Gender Ideology

- Action items for institutions:
 - Review all NOAs, including for terminated awards (requests for closeout costs) as well as reinstated and new awards.
 - Discuss gender ideology term and attendant risks with legal counsel.
 - Assess programs, policies, and practices of all relevant institutional departments and operations (employees, students, patients, etc.) – not just individual lab or research administration.
 - Document assessment and reasoning that supports accepting the term (if applicable).
 - Evaluate current policies on reporting non-compliance, whistleblowers and non-retaliation.
 - Follow developments regarding Executive Order 14168 and related Executive Orders and executive actions with respect to gender ideology and gender identity, including:
 - Judicial decisions
 - Proposed legislative changes (such as to Title VI and Title IX)
 - Changes to NIH and HHS Grants Policy Statements
 - Potential changes to Form 690
 - Challenge any “non-compliance”-based termination implemented without an opportunity for corrective action or an agency determination that no corrective action is possible. Administrative appeal right applies.

Emerging Compliance Challenges

New Standard Term of NIH Awards: DEI

- NIH Notice of Civil Rights Term and Condition of Award – NOT-OD-25-090 – April 21, 2025 – applicable to all new, renewal, supplement and continuation awards issued on or after that date:

Recipients must comply with all applicable Federal anti-discrimination laws material to the government's payment decisions for purposes of [the False Claims Act].

(1) Definitions. ...

(2) Grant award certification.

(a) By accepting the grant award, recipients are certifying that:

(i) They do not, and will not during the term of this financial assistance award, operate any programs that advance or promote DEI, DEIA, or discriminatory equity ideology [as defined in Executive Order 14190] in violation of Federal anti-discrimination laws; and

(ii) They do not engage in and will not during the term of this award engage in, a discriminatory prohibited boycott.

(3) NIH reserves the right to terminate financial assistance awards and recover all funds if recipients, during the term of this award, operate any program in violation of Federal anti-discriminatory laws or engage in a prohibited boycott.

The NIH GPS Section 4.1.2 "Civil Rights Protections" will be updated to incorporate this standard term and condition of award.

Emerging Compliance Challenges

New Standard Term of NIH Awards: DEI

- However, as of June 12, 2025, NIH has rescinded the new term per NOT-OD-25-124:

*Effectively immediately, NIH rescinds Guide Notice “Notice of Civil Rights Term and Condition of Award” (NOT-OD-25-090). NIH is **awaiting further Federal-wide guidance** and will provide a future update to the extramural community. The previous guidance is no longer in effect.*

This Notice only rescinds the language in NOT-OD-25-090 and does not rescind current policies related to existing laws, regulations or other HHS or NIH policies that are outlined in the NIH Grants Policy Statement.

- The DEI term had been incorporated in the October 2024 and April 2025 versions of the *HHS* Grants Policy Statement, but was dropped back out of the current July 2025 version (to align with NOT-OD-25-124?).
- Bottom line: no new standard DEI term (yet) but expect it to be reinvigorated (watch NOAs and HHS and NIH Grants Policy Statements).

Emerging Compliance Challenges

New Standard Term of NIH Awards: DEI

- Department of Justice Attorney General's Office "Guidance for Recipients of Federal Funding Regarding Unlawful Discrimination," released July 30, 2025, may be a key source of the awaited-for "further Federal-wide guidance":
 - Provides direction to all entities receiving federal funds on how federal anti-discrimination laws apply to their DEI programs, including a list and examples of "unlawful practices."
 - Recommends **non-binding** best practices to help recipients avoid the "significant legal risks" of these programs.
 - Asserts that recipients may be "liable for discrimination if they knowingly fund the unlawful practices of contractors, grantees, and other third parties" and recommends that recipients:
 - Include "explicit nondiscrimination clauses" in their grant agreements, contracts, and other agreements with third parties, specifying that federal funds cannot be used for discriminatory programs;
 - "Monitor third parties that receive federal funds" through the recipient to "ensure ongoing compliance, including reviewing [the third party's] program materials, participant feedback, and outcomes to identify potential discriminatory practices"; and
 - "Terminate funding for noncompliant programs."

Emerging Compliance Challenges

New Standard Term of NIH Awards: DEI

- Action items for institutions:
 - Review the July 30 DOJ AGO Guidance and attendant risks with legal counsel. Don't wait until any new standard DEI term may be reinvigorated.
 - Assess programs, policies, and practices of all relevant institutional departments and operations (employees, students, patients, etc.) – not just individual lab or research administration.
 - Document assessment and reasoning that supports accepting federal research funds (if applicable).
 - Determine whether/how the institution will implement the Guidance's recommendations with respect to subcontractors and other third parties.
 - Evaluate current policies on reporting non-compliance, whistleblowers and non-retaliation.
 - Follow developments, including:
 - Any further NIH notices regarding the standard DEI term
 - Changes to NIH and HHS Grants Policy Statements
 - Potential changes to Form 690
 - Review all NOAs, including for terminated awards (requests for closeout costs) as well as reinstated and new awards, for “interim” DEI terms specific to the award.

Emerging Compliance Challenges

NIH Closeout Timelines

- NIH Guidance on Enforcement of Closeout Requirements During the Appeals Process – NOT-OD-25-128 – July 7, 2025:

The purpose of this notice is to provide the extramural community with guidance on enforcement of standard closeout requirements on NIH grants and cooperative agreements during the agency priorities grant appeals pre-award procedures. NIH terminated awards due to activities that do not align with the NIH mission and agency priorities, timely submission of an appeal may impact the recipient's ability to complete all closeout requirements within the timeframes provided in the revised Notice of Award. NIH is still in the process of reviewing and responding to appeal submissions related to recent terminations. Some have received responses and others have not, which has placed the recipient at risk of noncompliance with closeout requirements to no fault of the recipient.

Therefore, NIH is alerting the extramural community that, in cases where a recipient has submitted an appeal, but has not yet received a response, NIH will not take action to initiate unilateral closeout while the appeal is under review. We will document our compliance records and ask that the community use this notice as supporting documentation to prevent an audit finding related to closeout.

Finally, please disregard language within the termination letters and/or subsequent Notice of Awards requiring recipients to comply with closeout timelines that do not align with NIHs standard processes found in the NIH Grants Policy Statement, 8.6 Closeout that requires recipients to submit the final Federal Financial Report, final Research Performance Progress Report, and Final Invention Statement and Certification within 120 calendar of the end of the period of performance.

Emerging Compliance Challenges

NIH Closeout Timelines

- Uncertainties remain, including:
 - Does enforcement discretion apply to situations where NIH only offered opportunity for institution to submit “request for reconsideration” of a termination to the relevant Institute director?
 - Probably not, given Guidance’s references to “timely submission of an appeal.”
 - Does closeout clock start over upon receipt of denial of an appeal?
- Action items for institutions:
 - Consider submitting inquiry to NIH Office of Policy for Extramural Research Administration.
 - If closeout documentation will be submitted while an appeal is pending, include a reservation of rights noting the pending appeal.

QUESTIONS?



Current Issues Briefing

COGR Forum IV: Adapting to Change: Policy Shifts & Research Impact

August 20,
2025

COGR Committee Directors:



Cindy Hope, *Director,
Costing and Financial
Compliance (CFC)*



Krystal Touns,
*Director, Contracts &
Grants Administration
(CGA)*



Kris West, *Director,
Research Ethics &
Compliance (REC)*



Kevin Wozniak,
*Director, Research
Security & Intellectual
Property (RSIP)*

Moderator:



Matt Owens, *President (COGR)*



Joint Associations Group (JAG) on Indirect Costs

- Formed in response to renewed attacks on federal reimbursement of indirect cost
- Ten national organization representing universities and other non-profit research organizations (AAU, APLU, AAMC, COGR...)
- Announced initiative, gathered SMEs, proposed models
 - Financial Accountability in Research (FAIR)

<https://linktr.ee/JAGTownHall>

COGR

COGR Response – Explore Cost Allocation Strategies

- Starting with Essential Research Performance Support



**Essential Research
Performance
Facilities (ERPF)**



Regulatory Costs



**Research
Information
Services (RIS)**



**Award
Monitoring,
Oversight, and
Reporting (AMOR)**

COGR Response – Explore Cost Allocation Strategies

- ***Next Steps***
 - ***Refining ERPS Categories***
 - ***Assessing GRO vs ERPS***
 - ***2 CFR 200 Revisions***
 - ***Keep advocating for practical solutions!***

Issues Forum

COGR Forum IV: Adapting to Change: Policy Shifts & Research Impact

August 20,
2025

COGR Committee Chairs:



Jeremy Forsberg,
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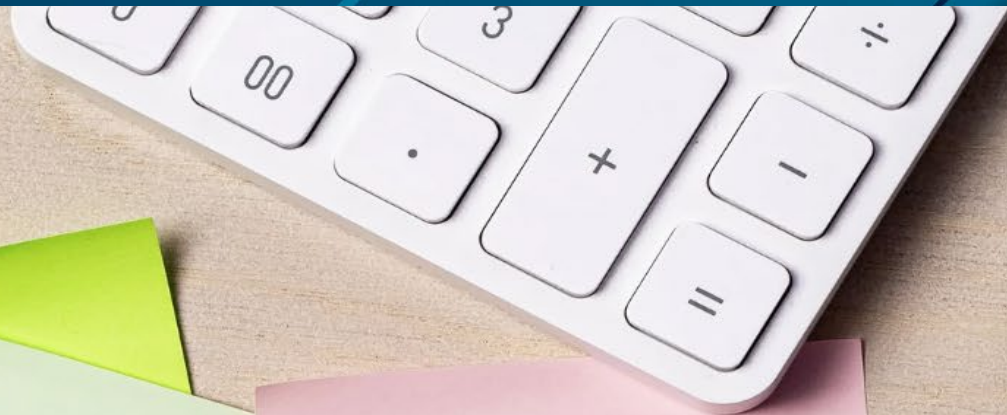


Jennifer Ponting, *Assoc.
Vice President for Research
Administration, University
of Chicago, Research
Security & Intellectual
Property (RSIP) Chair*

Q

&

A



Upcoming COGR Events



**Register Here for
Upcoming Events**



September 30, 2025: COGR Forum V

Registration Now Open



October 23-24, 2025: COGR Meeting in Washington D.C.

Registration is now open, early bird pricing through 9/5

Click the QR code or visit www.cogr.edu and “Meetings”

COGR