COGR
Advancing Effective Research Policy

10/2/25

RE: Update from COGR on Department of Energy Limitations on Reimbursement of Indirect Costs

The Department of Energy (DOE) has recently included new limitations on the reimbursement of indirect costs in both solicitations and awards. While, as explained below, Institutions of Higher Education (IHEs) are explicitly exempted in the language, the provision will affect the non-IHE collaborators of IHEs.

In the FY 2026 Notice of Funding Opportunity (NOFO), "Continuation of Solicitation for the Office of Science Financial Assistance Program" (DE-FOA-0003600), DOE includes a 10% or 15% of total cost cap on indirect costs for certain recipient types. In addition, members have reported a new award term appearing in some recent awards (See below term, FA-TC-0007.1-CH, July 2025), which sets maximum reimbursement levels for indirect costs and fringe benefits.

Under FA-TC-0007.1-CH REBUDGETING AND RECOVERY OF INDIRECT COSTS – REIMBURSABLE INDIRECT COSTS AND FRINGE BENEFITS (JULY 2025) Page 2 of the FA RD Special TC word document

c. DOE has established a maximum dollar amount that it will reimburse for indirect costs and fringe benefits under financial assistance awards and subawards. The maximum amount of funds to be paid or reimbursed for indirect costs and fringe benefit costs will be calculated as a percentage of the Total Award Amount, excluding amounts for Profit/Fee authorized in accordance with 2 CFR 910.358 and 2 CFR 200.400(g).

The applicable recipient types and percentages are as follows:

Recipient Type	***Maximum Reimbursement Amount***
State and Local Governments	*10% of Total Award Amount*
For-Profit Organizations	*15% of Total Award Amount*
Nonprofit Organizations	*15% of Total Award Amount*

The Total Award Amount is the sum of total direct costs and indirect costs, inclusive of any required Federal and non-Federal cost share. The maximum indirect cost and fringe benefits cost reimbursement amount (limitation) applies to all budget periods. The limitation shall be applied to recipients and subrecipients excluding Tribal Organizations, *Federally Funded Research and Development Centers (FFRDCs), and Institutions of Higher Education (IHEs).*

The limitation may be adjusted if revisions are made to the Budget as described in 2 CFR 200.308 and, for SBIR/STTR awards, SBIR/STTR General Term and Condition SBIR/STTR-GTC-0004-CH REVISION OF BUDGET AND PROGRAM PLANS.

d. The recipient must ensure its subrecipient's indirect costs and fringe benefit costs are appropriately managed, allowable, and comply with the requirements of this award and 2 CFR 200 as adopted and supplemented by 2 CFR 910, including any maximum indirect cost and fringe benefit cost reimbursement that applies to subrecipients.

As described in the May 2025 COGR Update, on April 11, 2025, DOE made an announcement, Department of Energy Overhauls Policy for College and University Research, Saving $405 Million Annually for American Taxpayers, limiting "financial support of "indirect costs" of DOE research funding to 15%."

AAU, ACE, APLU, and several universities brought suit against DOE challenging the 15% indirect cost cap as being implemented in violation of the Administrative Procedure Act (APA). [AAU v. DOE, 1:25-cv-10912 (D. Mass.)]. The district court issued a temporary restraining order against the government shortly after the case was filed, and on May 15, 2025, the court issued a preliminary injunction preventing the government from implementing the rate cap policy in any form with respect to Institutions of Higher Education nationwide. In June 2025, the government filed a motion with the district court asking it to enter final judgment with respect to the preliminary injunction so that the government could begin the appeal process. This motion was not opposed by the plaintiffs, and the government agreed not to seek a stay of the preliminary injunction pending appeal. Accordingly, on June 30, 2025, the district court entered a final judgment holding that the rate cap violated the APA and vacating, in its entirety, Policy Flash 2025-22, Adjusting Department of Energy Grant Policy for Institutions of Higher Education (IHE), which implemented the rate cap on IHEs. The government appealed the district court's decision to the First Circuit Court of Appeals. [AAU v. DOE, 25-1727]. Per the court's briefing schedule, the government filed its brief on September 24, 2025, and the plaintiffs' response is due on October 24, 2025. The court has not yet set a date for oral argument.

The April 11 announcement by DOE targeted only colleges and universities (Institutions of Higher Education/IHEs), but in a subsequent announcement, Energy Department Aligns Award Criteria for For-profit, Non-profit Organizations, and State and Local Governments, Saving $935 Million Annually, DOE broadened its application of caps on indirect cost reimbursement through three new policies. These policies, limiting indirect cost reimbursement for state and local governments to 10% and for nonprofit and for-profit organizations to 15%, apply only to assistance agreements (grants and cooperative agreements). Unlike the policy for IHEs, these policies also state, "The percentage that will be reimbursable is inclusive of total indirect costs and fringe benefit costs."

These policies have an impact on IHEs in that their non-IHE collaborators (prime recipients from which IHEs are subrecipients and subrecipients to which IHEs are pass-through entities) are subject to these new limits, **unless** such non-IHE collaborators are covered by legal challenges to the DOE rate cap in other lawsuits. For example, in New York v. DOE, several states filed suit challenging a 10% IDC rate cap imposed on state and local government awardees per Policy Flash 2025-25. [6:25-cv-01458, D. Or.] Although a final order has not been entered in this case, media outlets reported that in an October 1, 2025, the judge issued a ruling from the bench granting the states' motion for summary judgment after finding that the rate cap violated the APA.

Should DOE prevail in court, IHEs will be subject to the April 11 DOE policy limiting indirect cost reimbursement to 15%, and it is possible DOE would revise to the policy to apply the limit to the sum of indirect costs and fringe benefits. Alternatively, as in the NSF case, the Department of Justice might dismiss its appeal, as OMB is expected to revise 2 CFR 200, Uniform Guidance, to limit indirect cost reimbursement from all federal funding agencies.

Details of COGR's collaboration with other associations representing research institutions, the Joint Associations Group on Indirect Costs (JAG), to counter federal attacks on reimbursement of the indirect (facilities and administrative) costs of research can be found on the COGR F&A Cost Reimbursement Materials webpage.