Navigating the Evolving Federal Grant Landscape

Key Issues Facing Nonprofit Finance Leaders

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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 over a decade in private practice supporting federal grantees and contractors, 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 presenter, Scott S. Sheffler. They should not be attributed more broadly to Venable LLP or anyone other than Mr. Sheffler.

Agenda

1. 2025 Cases – Important Principles and Trends
2. Diversity, Equity, and Inclusion ("DEI") in the context of Federally Funded Programs
3. Indirect Cost Rates – Legal Update
4. Executive Order 14332: Improving Oversight of Federal Grantmaking
5. Questions

CASES IN 2025 REFLECTING IMPORTANT PRINCIPLES AND TRENDS

2025 Cases Reflecting Important Principles

Case	Posture	Principle/Trend
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 (District Court, D.D.C.)	Seemingly near final grant agreement (appeal withdrawn).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.

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.

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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. // Appeal to First Circuit underway (no substantive filings yet)

Citation: 25-cv-11048 // Appeal: 25-2230

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.

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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.

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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.

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DEI IN THE CONTEXT OF FEDERALLY FUNDED PROGRAMS

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.

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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.

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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)
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:

- DOJ 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"

Segregation:

- DOJ Examples: Race-based training sessions; Segregation in facilities or resources
- 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."

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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 Use of Protected Characteristics:

- DOJ Examples: Race-based "Diverse Slate" policies (specific minimum numbers); Sex-based Selection for Contracts; Race- or Sex-based Program Participation (specific minimum quotas)

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."
- DOJ Examples: Trainings that Promote Discrimination Based on Protected Characteristics

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
- Further, each Unified Certification Program (UCP) that certifies DBEs to reevaluate all previously certified DBEs under the new standards. Entity statements describing social disadvantage are not to rely "in whole or in part on race or sex." 49 C.F.R. § § 26.5 and 26.67.
- DOT guidance, including FAQs, available here: https://www.transportation.gov/mission/civil-rights/disadvantaged-business-enterprise/october-2025-interim-final-rule.

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Financial Assistance General Reps and Certs – Pending Updates

91 Fed. Reg. 3726 (Jan 28, 2026):

https://www.govinfo.gov/content/pkg/FR-2026-01-28/pdf/2026-01676.pdf

- Update proposed for SAM.gov Financial Assistance General Reps and Certs:

  > "The proposed amendment would update the Financial Assistance General Representations and Certifications to align with updated executive branch guidance including Department of Justice "Guidance for Recipients of Federal Funding Regarding Unlawful Discrimination" (July 29, 2025) (https:// www.justice.gov/ag/media/1409486/dl) and Executive Order (E.O.) 14173 of January 21, 2025, Ending Illegal Discrimination and Restoring Merit-Based Opportunity (https:// www.federalregister.gov/documents/2025/01/31/2025-02097/ending-illegaldiscrimination-and-restoring-meritbased-opportunity) applicable to all entities receiving grants, cooperative agreements, and financial assistance such as loans, insurance, and direct appropriations."

- Comments were due March 30, 2026

Financial Assistance General Reps and Certs

Text of Proposed Reps and Certs available here: https://www.regulations.gov/document/GSA-GSA-2026-0001-0007:

~~(6~~(6) Will comply with the U.S. Constitution, all Federal laws, and relevant executive orders prohibiting unlawful discrimination on the basis of race or color in the administration of federally funded programs (See Titles VI and VII of the Civil Rights Act of 1964, the Equal Protection Clause of the Fourteenth Amendment, and 2 C.F.R. § 200.303 Internal controls). Federal antidiscrimination laws apply to programs or initiatives that involve discriminatory practices, including those labeled as Diversity, Equity, and Inclusion (DEI) or "diversity, equity, inclusion, and accessibility" (DEIA) programs. Entities that receive federal funds, like all other entities subject to federal antidiscrimination laws, must ensure that their programs and activities comply with federal law and do not discriminate on the basis of race or color. Examples of practices that may violate applicable Federal anti-discrimination laws include:

(i) Granting preferential treatment based on race or color, such as race-based scholarships or programs, preferential hiring or promotion practices, or access to facilities or resources based on race or ethnicity, including through the use of "cultural competence" requirements, "overcoming obstacles" narratives, or "diversity statements;"

(ii) Segregation based on race or color, such as race-based training sessions, segregation in facilities or resources, or implicit segregation through program eligibility;

Financial Assistance General Reps and Certs

Text of Proposed Reps and Certs available here: https://www.regulations.gov/document/GSA-GSA-2026-0001-0007:

(iii) Other unlawful use of race or color as criteria, such as race-based "diverse slate" policies in hiring, race-based selection for contracts, or race-based program participation or resource allocation;

(iv) Training programs that stereotype, exclude, or single out individuals based on protected characteristics or create a hostile environment; or

(v) Retaliation by taking adverse actions against employees, participants, or beneficiaries because they engage in protected activities related to opposing DEI practices they reasonably believe violate federal antidiscrimination laws. Protected activities include raising concerns or filing complaints about, or objecting to or refusing to participate in, discriminatory programs, trainings, or policies;

Financial Assistance General Reps and Certs

Text of Proposed Reps and Certs available here: https://www.regulations.gov/document/GSA-GSA-2026-0001-0007:

(7) Will not knowingly bring or attempt to bring to the United States, transport, conceal, harbor, shield, hire, or recruit for a fee an illegal alien; and will not induce an alien to enter or reside in the United States with reckless disregard of the fact that the alien is illegal (See 8 U.S.C. § 1324 and 2 C.F.R. § 200.303 Internal controls);

(8) Will not fund, subsidize, or facilitate violence, terrorism, or other illegal activities that threaten public safety or national security (See 2 CFR 200.303 Internal controls);

Financial Assistance General Reps and Certs

Text of Proposed Reps and Certs available here: https://www.regulations.gov/document/GSA-GSA-2026-0001-0007:

To the extent that any the certifications or representations on this page are the subject of an active court order or injunction that is legally binding on the recipient and the relevant awarding agency, and prohibits enforcement of such requirements, the affected certifications or representations will be deemed inapplicable to that recipient. All other certifications and representations not directly affected by such order shall remain in full force and effect.

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 Presidentdirectly
  - March 10, 2025 (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

- Fourth Circuit Court of Appeals:
  - Docket No. 25-1189
  - March 14, 2025: Court stayed District Court's preliminary injunction pending appeal on basis that E.O.s had not been implemented
  - February 6, 2026: Court vacated District Court's preliminary injunction. Largely held that the E.O.'s did not violate First or Fifth Amendment limitations on the grounds that they directed agency action or called for compliance with existing law. As such, the Fourt Circuit held that challenges to unconstitutional application could be brought in the future, but that the E.O.'s themselves did not facially violate the First or Fifth Amendments.

- After the Fourth Circuit's decision, the parties filed a Joint Motion to Stay in District Court through April 17 while plaintiffs considered next steps. The stay was granted.

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:
  - 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).

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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)).
- Case fully briefed and argued.
- On February 11, 2026, Government filed a copy of the Fourth Circuit decision discussed above as a notice of additional authority. On February 18, 2026, plaintiffs filed a letter arguing the Fourth Circuit decision was wrongly decided. Case remains pending before the Seventh Circuit.

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.
- Government appealed but then withdrew their appeal in Sept. 2025—substantive litigation of case continues.
- January 9, 2026, plaintiffs filed a motion for summary judgment, remains pending with the District Court.
- February 18, 2026, Government filed response. Key argument include:
  - Emphasize that the "Executive Order Compliance Instructions" have been withdrawn and will not be reissued, leaving only certifications that grantees will comply with federal anti-discrimination laws and Executive Orders, which, per the Government, were pre-existing obligations.
  - Argue that AmeriCorps "abandoned" the challenged conditions. Given the SAM.gov effort and AmeriCorps T&C discussed above, this seems a narrow argument based simply on the prior "Instructions."
  - According to the Government, the "DEI Condition" was modified only to prohibit promoting DEI that violates federal anti-discrimination laws. It therefore cites the Fourth Circuit decision discussed above to assert there is no constitutional infirmity in the condition, as it is both within the AmeriCorps' statutory powers and unambiguous.
  - Argue that grant award determinations are committed entirely to agency discretion and thus are presumptively unreviewable.
- April 8, 2026, Plaintiffs filed their reply. Argue that there is no factual basis to believe that the underlying policy change has

INDIRECT COST RATE CAPS

Rate Caps Summary

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 award for 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)

Rate Cap Litigation

Litigation

Cap	Case	Status (Current as of March 20, 2026)
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.
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 initially appealed to the First Circuit, but on February 10, 2026, moved to dismiss the appeal. The First Circuit dismissed the case on February 18.

Litigation

Cap	Case	Status (Current as of March 20, 2026)
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. DOE initially appealed to the First Circuit and filed its brief on September 24. Proceedings suspended during government shutdown. Appellees filed their response briefs on December 22. On March 11, DOE moved to dismiss the appeal, and the First Circuit dismissed on March 16.
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. On April 2, the Government moved to dismiss its appeal.

Congressional Action

Congressional Action

2026 NDAA, Pub. L. 119-60 (Dec. 18, 2025), Sec. 230, calls for coordination with extramural research community before implementing any DoD rate caps.

Various Appropriations Statutes from Early 2026 Impose Limitations on rate caps.

For Example:

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.

Congressional Action

Various Appropriations Statutes from Early 2026 Impose Limitations on rate caps. Legislative References:

Cap	Act / Bill Impacting Rate Cap Authority
NIH	Pub. L. 119-75 (Feb. 3, 2026)
NSF	Pub. L. 119-74 (Jan. 23, 2026)
DOD	Pub. L. 119-75 (Feb. 3, 2026)
DOE 1 (IHE)	Pub. L. 119-74 (Jan. 23, 2026)
DOE 2 (State/Local, non-IHE non-profit/For-profit)	Pub. L. 119-74 (Jan. 23, 2026)
NASA (if attempted)	Pub. L. 119-74 (Jan. 23, 2026)

EXECUTIVE ORDER 14332: IMPROVING OVERSIGHT OF FEDERAL GRANTMAKING

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

Venable's Government Grants Practice

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