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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

STATE OF NEW YORK; STATE OF
COLORADO; STATE OF MINNESOTA;
STATE OF OREGON; STATE OF
CALIFORNIA; STATE OF CONNECTICUT;
STATE OF DELAWARE; DISTRICT OF
COLUMBIA; STATE OF HAWAI'I; STATE OF
ILLINOIS; OFFICE OF THE GOVERNOR, *ex*
rel. ANDY BESHEAR, in his official capacity as
Governor of the Commonwealth of Kentucky;
STATE OF MAINE; STATE OF MARYLAND;
STATE OF MICHIGAN; STATE OF NEVADA;
STATE OF NEW MEXICO; STATE OF
NORTH CAROLINA; JOSH SHAPIRO, in his
official capacity as Governor of the
Commonwealth of Pennsylvania; STATE OF
WASHINGTON; STATE OF WISCONSIN,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
ENERGY; CHRIS WRIGHT, in his official
capacity as Secretary of the U.S. Department of
Energy,

Defendants.

Case No. 6:25-cv-01458

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

INTRODUCTION

1. Plaintiff States bring this lawsuit to challenge a policy issued by Defendant the United States Department of Energy (DOE) that will unlawfully limit awards to Plaintiff States.

2. DOE awards provide Plaintiff States with key services and programs. State energy agencies, which receive substantial funding from DOE, have wide-ranging missions to promote energy efficiency, increase our nation's energy security, support lower long-term consumer costs and reduced energy cost burdens for residents in our states, and support emergency preparedness efforts.

3. But the challenged DOE Policy, announced in DOE Policy Flash 2025-25 (the "Policy Flash"), arbitrarily limits those awards by limiting the sum of indirect costs and fringe benefits costs included in awards to 10% of the total award amount. Indirect costs are costs that are shared among multiple projects, including, for example, the costs of operating a facility that supports more than one funded project or the cost of staff that work on multiple projects. Fringe benefits are costs for staff that accompany their salaries, such as health insurance and pensions.

4. The Policy Flash unlawfully contravenes the regulatory scheme provided by DOE and the Office of Management and Budget that allocates indirect costs based on a single rate that a state agency negotiates with a particular federal agency, which all other federal agencies are required to accept.

5. The Policy Flash contains conclusory and arbitrary reasoning, such as the truism that "indirect cost payments are not for funding the Department's direct project activities." But nowhere does the Policy Flash acknowledge that indirect costs are merely costs shared among projects, many of which are critical to the central purpose of the funding. This is precisely the

reason for the longstanding prior practice. Nor does the Policy Flash grapple with the real-world consequences of this policy or consider States' reliance interests.

6. Four times this year, federal agencies (including DOE itself) have issued policies setting a cap on grantees' ability to recover indirect costs under federal awards. All four times, federal courts swiftly intervened, enjoining or vacating these policies as unlawful on these same grounds.

7. Unlike the four enjoined policies, the Policy Flash purports to impose a cost cap (rather than a rate cap) and sweeps in fringe benefits costs. But these differences do nothing to ameliorate the legal infirmities other courts have identified. To the contrary, the cap—however framed—is unlawful for the same and even more reasons, including because it is contrary to regulations mandating that an award be comprised of *all* allowable direct costs and allocable indirect costs. And the unprecedented decision to cap fringe benefits further contravenes regulations mandating reimbursement of fringe benefits.

8. Because indirect and fringe costs awarded by the DOE to Plaintiff States fund crucial work like supporting energy security, lowering energy costs, reducing greenhouse gas pollution, and enabling the transition to clean energy sources, Plaintiffs bring this action to protect their states and institutions from DOE's unlawful policy.

JURISDICTION AND VENUE

9. This Court has jurisdiction under 28 U.S.C. §§ 1331 and 2201(a). Jurisdiction is also proper under the judicial review provisions of the APA. 5 U.S.C. §§ 702, 704.

10. An actual controversy exists between the parties within the meaning of 28 U.S.C. § 2201(a), and this Court may grant declaratory relief, injunctive relief, and other relief pursuant to 28 U.S.C. §§ 2201–2202, and 5 U.S.C. §§ 705–706.

11. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b)(2) and (e)(1). Defendants are an agency of the United States Government and an officer sued in his official capacity. The capitol of Oregon and the principal offices of the Oregon Department of Energy are in Marion County, and a substantial part of the events giving rise to this Complaint occurred and continue to occur within Marion County and the District of Oregon.

PARTIES

Plaintiffs

12. Plaintiff the State of New York, represented by and through its Attorney General Letitia James, is a sovereign state of the United States. The Attorney General is New York State's chief law enforcement officer and is authorized under N.Y. Executive Law § 63 to pursue this action.

13. Plaintiff the State of Colorado, represented by and through its Attorney General Phil Weiser, is a sovereign state of the United States. The Attorney General acts as the chief law enforcement officer of the State.

14. Plaintiff the State of Minnesota is a sovereign state of the United States of America. Minnesota is represented by Attorney General Keith Ellison, who is the chief law enforcement officer of Minnesota.

15. Plaintiff the State of Oregon is a sovereign state of the United States. Oregon is represented by Attorney General Dan Rayfield. The Attorney General is the chief legal officer of Oregon and is authorized to institute this action.

16. Plaintiff the State of California is a sovereign state of the United States of America. California is represented by Attorney General Rob Bonta, who is the chief law enforcement officer

of California. The California Energy Commission is the primary energy agency and administers several DOE-funded awards for California, including State Energy Program (SEP) awards.

17. Plaintiff the State of Connecticut is a sovereign state in the United States of America. Connecticut is represented by Attorney General William Tong, who is the chief law enforcement officer of Connecticut.

18. Plaintiff the State of Delaware is a sovereign state of the United States of America. This action is brought on behalf of the State of Delaware by Attorney General Kathleen Jennings, the “chief law officer of the State.” *Darling Apartment Co. v. Springer*, 22 A.2d 397, 403 (Del. 1941). Attorney General Jennings also brings this action on behalf of the State of Delaware pursuant to her statutory authority. Del. Code Ann. tit. 29, § 2504.

19. Plaintiff the District of Columbia is a municipal corporation organized under the Constitution of the United States. It is empowered to sue and be sued, and it is the local government for the territory constituting the permanent seat of the federal government. The District is represented by and through its chief legal officer, Attorney General Brian L. Schwalb. The Attorney General has general charge and conduct of all legal business of the District and all suits initiated by and against the District and is responsible for upholding the public interest. D.C. Code. § 1-301.81.

20. Plaintiff the State of Hawai‘i, represented by and through its Attorney General Anne Lopez, is a sovereign state of the United States. The Attorney General is Hawaii’s chief legal officer and chief law enforcement officer and is authorized by Hawaii Revised Statutes § 28-1 to pursue this action.

21. Plaintiff the State of Illinois is a sovereign state in the United States of America. Illinois is represented by Kwame Raoul, the Attorney General of Illinois, who is the chief law

enforcement officer of Illinois and authorized to sue on the State's behalf. Under Illinois law, the Attorney General is authorized to represent the State's interests by the Illinois Constitution, article V, § 15. *See* ILC 205-4.

22. Plaintiff Office of the Governor, *ex rel.* Andy Beshear, brings this suit in his official capacity as Governor of the Commonwealth of Kentucky. The Kentucky Constitution makes the Governor the Chief Magistrate with the "supreme executive power of the Commonwealth," Ky. Const. § 69, and gives the Governor, and only the Governor, the duty to "take care that the laws be faithfully executed," *id.* § 81; *Beshear v. Bevin*, 498 S.W.3d 355, 369 (Ky. 2016) (citing Ky. Const. § 81). Under Kentucky statute, the Governor is the head of his General Cabinet and his Executive Cabinet. Ky. Rev. Stat. §§ 11.060, 11.065. The Governor's Executive Cabinet consists of the Secretaries of executive branch cabinets, including the Kentucky Energy and Environment Cabinet. In fulfilling his constitutional duties, the Governor has authority to bring this action.

23. Plaintiff the State of Maine is a sovereign state in the United States of America. Maine is represented by Attorney General Aaron Frey, who is the chief law enforcement officer of Maine.

24. Plaintiff the State of Maryland is a sovereign state of the United States of America. Maryland is represented by Attorney General Anthony G. Brown, who is the chief legal officer of Maryland.

25. Plaintiff the State of Michigan is a sovereign state of the United States of America. Michigan is represented by Attorney General Dana Nessel, who is the chief law enforcement officer of Michigan.

26. Plaintiff the State of Nevada, represented by and through Attorney General Aaron D. Ford, is a sovereign State within the United States of America. The Attorney General is the

chief law enforcement of the State of Nevada and is authorized to pursue this action under Nev. Rev. Stat. 228.110 and Nev. Rev. Stat. 228.170.

27. Plaintiff the State of New Mexico is a sovereign state of the United States of America. New Mexico is represented by Attorney General Raúl Torrez who is the chief law enforcement officer of New Mexico.

28. Plaintiff the State of North Carolina is a sovereign state of the United States of America. North Carolina is represented by Attorney General Jeff Jackson, who is the chief law enforcement officer of North Carolina.

29. Plaintiff Josh Shapiro brings this suit in his official capacity as Governor of the Commonwealth of Pennsylvania. The Pennsylvania Constitution vests “[t]he supreme executive power” in the Governor, “who shall take care that the laws be faithfully executed.” Pa. Const. art. IV, § 2. The Governor oversees all executive agencies in Pennsylvania and is authorized to bring suit on their behalf. 71 P.S. §§ 732-204(c), 732-301(6), 732-303.

30. Plaintiff the State of Washington is a sovereign state of the United States of America. Washington is represented by Attorney General Nicholas W. Brown. The Attorney General of Washington is the chief legal adviser to the State and is authorized to act in federal court on behalf of the State on matters of public concern. Chapter 43.10 RCW.

31. Plaintiff the State of Wisconsin is a sovereign state in the United States of America. Wisconsin is represented by Josh Kaul, the Attorney General of Wisconsin. Attorney General Kaul is authorized to sue on behalf of the State.

Defendants

32. Defendant United States Department of Energy (DOE) is an executive agency of the federal government that is responsible for ensuring America’s security and prosperity by

addressing its energy, environmental and nuclear challenges through science and technology solutions.

33. Defendant Chris Wright is the Secretary for the U.S. Department of Energy. He is sued in his official capacity.

ALLEGATIONS

I. Statutory and Regulatory Background

34. Congress has directed DOE to provide financial assistance to states including, for example, to support states in developing state energy conservation plans and to support weatherization of homes to increase energy efficiency and reduce energy costs. *See* 42 U.S.C. §§ 6323(b), 6864(a).

35. These funds enable Plaintiff States to operate critical programs, including forecasting energy requirements; supporting renewable energy goals; tracking energy supply chains and resiliency; supporting emergency preparedness and responses to natural disasters; supporting energy affordability efforts; and preparing risk assessments related to the use of nuclear power or a radiological emergency.

36. Congress has directed the Office of Management and Budget (OMB) to “establish general management policies for executive agencies,” including policies for grant management. 31 U.S.C. § 503(b)(2)(C).

37. OMB has accordingly established uniform administrative requirements, cost principles, and audit requirements for federal awards, codified in 2 C.F.R. part 200.

38. Appendix VII of 2 C.F.R. part 200 provides the “methods for allocating indirect costs and computing indirect cost rates” for states, local governments, and Indian tribes. *Id.* at (C)(1)(c).

39. DOE has adopted the 2 C.F.R. part 200 OMB policies. 2 C.F.R. § 910.120; *see also* 10 C.F.R. §§ 600.2(b), 600.127(a), 600.222(b).

40. DOE funding to States includes two types of costs. The first is direct costs, *i.e.* costs that can be attributed to a specific project supported by DOE funding. 2 C.F.R. § 200.413(a). “Costs charged directly to a Federal award are typically incurred specifically for that Federal award (including, for example, supplies needed to achieve the award’s objectives and the proportion of employee compensation and fringe benefits expended in relation to that specific award).” 2 C.F.R. § 200.413(b). The second is indirect costs—*i.e.*, costs that “have been incurred for common or joint purposes” and therefore cannot be attributed and allocated directly to a specific project. 2 C.F.R. part 200 Appendix VII ¶ A(1); *see also* 2 C.F.R. § 200.414.

41. Indirect costs include two broad categories: facilities and administration. 2 C.F.R. § 200.414(a). “Facilities” costs are “defined as depreciation on buildings, equipment and capital improvements, interest on debt associated with certain buildings, equipment and capital improvements, and operations and maintenance expenses.” *Id.* “Administration” costs are “defined as general administration and general expenses such as the director’s office, accounting, personnel, and all other types of expenditures not listed specifically under” the definition of “Facilities.” *Id.*

42. Fringe benefits include additional staffing costs apart from salaries, such as the costs of employee leave, insurance, and pensions.

43. Certain fringe benefits can be “charged as direct or indirect costs following the recipient’s . . . accounting practices.” 2 C.F.R. § 200.431(c); *see also id.* § 200.413(b). States often include “applicable fringe benefits” as part of their direct costs. 2 C.F.R. § 200.1.

44. The total amount of a DOE award is the sum of the allowable direct costs and allocable indirect costs, less any credits. 2 C.F.R. § 200.402.

45. A cost is “allowable” so long as it meets the basic criteria set forth in 2 C.F.R. § 200.403, including, for example, that the costs must “[b]e adequately documented” and must “[b]e necessary and reasonable for the performance of the Federal award.” *Id.* §§ 200.403(a), (g).

46. Fringe benefit costs “are allowable provided that the benefits are reasonable and are required by law, an organization-employee agreement, or an established policy of the recipient or subrecipient.” 2 C.F.R. § 200.431(a); *see also* 2 C.F.R. §§ 200.431(b)-(i).

47. “A cost is reasonable” so long as it is “an amount that a prudent person would incur under the circumstances prevailing when the decision was made to incur the cost,” taking into account various factors including market prices, the recipient’s written policies and procedures, and State laws and regulations. 2 C.F.R. § 200.404.

48. A cost is “allocable” so long as it meets the basic criteria set forth in 2 C.F.R. § 200.405, including that the cost “[i]s incurred specifically for the Federal award,” “[b]enefits both the Federal award and other work of the recipient or subrecipient and can be distributed in proportions that may be approximated using reasonable methods”; or “[i]s necessary to the overall operation of the recipient or subrecipient and is assignable in part to the Federal award.”

49. As to indirect costs, “*All* activities which benefit from the recipient’s or subrecipient’s indirect cost . . . will receive an appropriate allocation of indirect costs.” 2 C.F.R. § 200.405(b) (emphasis added).

II. Negotiated Indirect Cost Rates

50. Each State agency negotiates an indirect cost rate with one “cognizant agency” of the federal government. 2 C.F.R. part 200 Appendix VII ¶ D(1)(b); *see also* 2 C.F.R. § 200.416(b), (c).

51. In general, the cognizant federal agency “is the Federal agency with the largest dollar value of total Federal awards with a [State] governmental unit.” 2 C.F.R. part 200 Appendix V ¶ F(1).

52. DOE is the cognizant federal agency for some State agencies that receive DOE grants, including some Plaintiff States’ agencies responsible for energy policy and/or regulation (“State Energy Agencies”). Other federal agencies, such as the Department of Health and Human Services, serve as the cognizant federal agency for other DOE grantees.

53. To start the negotiation, the State agency submits a proposal with supporting documentation for indirect costs to the cognizant federal agency. *See* 2 C.F.R. part 200 Appendix VII ¶¶ D(1)-(2).

54. At the conclusion of the negotiation, the State agency’s indirect cost rate is formalized in a written agreement between the cognizant federal agency and the State agency, called a Negotiated Indirect Cost Rate Agreement (NICRA).

55. A NICRA may include: (a) a provisional rate, which is a temporary indirect cost rate applicable to a specified period which is used for funding, interim reimbursement, and reporting indirect costs on Federal awards pending the establishment of a final rate for that period; (b) a predetermined rate, which is an estimate of costs to be incurred in a future period to be used in situations where the cost experience and other available facts are sufficient to reach an informed judgment as to the probable level of indirect costs; and/or (c) a final rate which is an indirect cost rate applicable to a specified past period which is based on the actual allowable costs of the period. *See* 2 C.F.R. part 200 Appendix VII ¶ B.

56. All types of indirect cost rates (provisional, predetermined, and final) provided in NICRAs are based on the State agency's submission of documentation and the negotiation between the cognizant federal agency and the State agency.

57. Negotiated indirect cost rates in NICRAs are stated as a percentage rate that expresses indirect costs as a percentage of the "base" direct costs.

58. The "base" direct costs can differ for different awards. Some NICRAs include only one rate that applies to all types of direct costs. 2 C.F.R. part 200 Appendix VII ¶¶ C(2)-(3). Other NICRAs include multiple rates, with different rates applicable to different types of direct costs that form the "base" direct costs for that rate. *See* 2 C.F.R. part 200 Appendix VII ¶¶ C(2)-(3). The base may be (1) "total direct costs," which include fringe benefits; (2) "direct salaries and wages"; or (3) "another base which results in an equitable distribution." 2 C.F.R. part 200 Appendix VII ¶ C(2)(c); 2 C.F.R. § 200.1.

59. The indirect cost rate included in the NICRA is then binding on the entire federal government, often for two years or more. 2 C.F.R. § 200.414(c)(1); 2 C.F.R. part 200, Appendix VII ¶ E.

60. A State agency without a NICRA may "elect to charge a de minimis rate" for indirect costs "of up to 15 percent." 2 C.F.R. § 200.414(f). Federal agencies "must not compel" an agency to "accept the de minimis rate." 2 C.F.R. part 200, Appendix VII ¶ D(1)(c).

61. A Federal agency may deviate from the negotiated rate only in two circumstances: (1) "when required by Federal statute or regulation," or (2) "when approved by the awarding Federal agency in accordance with [2 C.F.R. § 200.414(c)(3)]." 2 C.F.R. § 200.414(c)(1).

62. As to the second exception, 2 C.F.R. § 200.414(c)(3) states that: "The Federal agency must implement, and make publicly available, the policies, procedures and general

decision-making criteria that their programs will follow to seek and justify deviations from negotiated rates.”

63. A Federal agency must include the policies relating to indirect cost rates in the notice of funding opportunity. 2 C.F.R. § 200.414(c)(4).

III. DOE’s Historical Practice in Awarding Indirect Costs and Fringe Benefits

64. Until the Policy Flash, DOE, like other federal agencies, negotiated indirect cost rates as the cognizant federal agency with State agencies, including State energy agencies, and accepted State agencies’ negotiated indirect cost rates with other cognizant federal agencies.

65. Negotiated indirect cost rates are stated as a percentage of the relevant direct costs (in some cases, the base includes all direct costs, including fringe benefits, but in other cases the base includes a subset of direct costs). As a simple example, an award with \$80,000 in direct costs and a 50% indirect cost rate on all direct costs would result in \$40,000 of indirect costs (50% of the \$80,000) and thus a total award of \$120,000.

66. For example, DOE negotiated with the New York State Energy Research and Development Authority (NYSERDA) and in December 2023 entered into a NICRA providing for final 2022-2023 negotiated indirect cost rates ranging from 40% to 52% and provisional 2023-2025 negotiated indirect cost rates ranging from 42% to 69%, depending on the expense type.

67. The Colorado Energy Office (CEO) entered into a NICRA providing for a negotiated provisional indirect cost rate of 43.6% for state fiscal years 2026-2028.

68. In March 2024, the predetermined indirect cost rates for the Maryland Energy Administration were approved at a rate of 40% by DOE.

69. Historically, DOE, like other federal agencies, has complied with the regulatory scheme set forth in 2 C.F.R. part 200, awarding indirect costs at State agencies' negotiated indirect cost rate and awarding fringe costs in accordance with State agencies' accounting principles.

70. Historically, DOE, like other federal agencies, has not imposed a cap on indirect costs and has awarded indirect costs pursuant to State agencies' negotiated indirect cost rates.

71. Historically, DOE, like other federal agencies, has not imposed a cap on fringe costs.

IV. DOE's Policy Flash

72. On May 8, 2025, DOE issued the Policy Flash, formally titled "2025-25 Adjusting Department of Energy Financial Assistance Policy for State and Local Governments' Financial Assistance Awards." Exhibit 1. The Policy Flash "establish[ed] a new policy" imposing an across-the-board cap on the amount of indirect cost and fringe benefit expenditures. *Id.* at 3.

73. Specifically, the Policy Flash "establish[ed] a maximum allowable dollar amount (stated in terms of a percentage of the total project award amount) that it will reimburse for allowable, allocable, and reasonable indirect costs." *Id.* "For state and local government financial assistance awards, this maximum percentage is 10 percent (10%)." *Id.* at 4. That percentage is "inclusive of total indirect costs and fringe benefit costs." *Id.* at 3.

74. The Policy Flash directs that "recipients should continue to utilize their negotiated and approved indirect cost rate(s) in applications for Awards, but the Department will establish a maximum dollar amount that it will reimburse under Awards to state and local governments. The maximum limit of funds to be paid or reimbursed to a new Award recipient as indirect costs will be calculated as a percentage of the total project award amount and will be included in the Award terms as a cap." *Id.* at 4.

75. The Policy Flash states that DOE “will limit the payment or reimbursement of all allowable, allocable, and reasonable indirect costs to a maximum of ten percent (10%) of the total project award amount.” *Id.*

76. The Policy Flash applies to “New Awards,” that is, “Awards issued under Notices of Funding Opportunity yet to be released.” *Id.* at 3.

77. The Policy Flash also applies to “Conditional Awards,” that is, “awards for prior Notices of Funding Opportunity or Funding Opportunity Announcements where negotiations are not yet complete and/or the Award has not been executed.” *Id.*

78. The Policy Flash provides the following reasoning:

While the Department is aware that many Award recipients use indirect cost payments to effectuate activities funded by the Department’s financial assistance awards, these indirect cost payments are not for funding the Department’s direct project activities. As these funds are entrusted to the Department by the American people, the Department must ensure it is putting funds to appropriate use on financial assistance programs. To improve efficiency and curtail costs where appropriate, the Department seeks to better balance the financial needs of financial assistance award recipients with the Department’s obligation to responsibly manage federal funds. . . . When awarding financial assistance to state and local governments these policies, procedures, and criteria are intended to better balance the Department’s dual responsibilities to financial assistance award recipients and the American people. . . . This policy will better balance the Department’s twin aims of funding meaningful financial assistance programs to stimulate a public purpose, such as improved infrastructure or technology deployment, and upholding its fiduciary Federal Stewardship obligations to the American people.

Id. at 2-4.

79. On June 30, 2025, DOE issued a financial assistance letter titled “FAL 2025-05, Implementation of Indirect and Fringe Benefits Cost Reimbursement Limits on Financial Assistance Awards.” (“FAL”), Exhibit 2. Among other things, the FAL provides guidance for DOE grant officers on the implementation of the Policy Flash.

80. The FAL explains that “[t]he maximum amount of funds that may be paid or reimbursed to a recipient for indirect and fringe benefits costs will be calculated as a percentage of the project’s Total Award Amount”; that the rate for “State and Local Governments [is] up to 10% of the Total Award Amount”; and that this “percentage[. . .] may deviate from the recipient’s negotiated indirect cost rates specified in the award.” *Id.* at 4-5.

81. The FAL provides sample language for Notices of Funding Opportunities, which states that “[a]pplicants and recipients must ensure that the sum of indirect costs and fringe benefits in the proposed budget do not exceed the maximum percentage allowed against the total award”; that “[t]his limit applies regardless of an applicant’s negotiated indirect cost rate agreement (NICRA), rate proposal”; and that “[i]f an applicant’s NICRA . . . rate yields higher indirect cost amounts than” the cap would allow, then the “limited amount must be used.” *Id.* at 6.

82. The FAL also provides sample language for Award Terms and Conditions applicable to States and local governments, which states: “In accordance with DOE Policy, while the recipient may allocate the listed indirect cost rates above, the recipient is limited to a **maximum percentage of 10% of the Total Award Amount for reimbursement of indirect costs and fringe benefits costs**. Therefore, the limitation for indirect cost and fringe benefits reimbursement on this award is \$[####,###] or no more than **10%** of the total award.” *Id.* at 8 (emphasis in original).

83. The FAL also makes clear that the reimbursement limit applies to subrecipients, and that “[t]he maximum amount of funds to be paid or reimbursed from the recipient to a subrecipient for its indirect costs and fringe benefits under a subaward will be calculated as a percentage (%) of the total subaward amount, inclusive of the Federal and applicable non-Federal cost share amount.” *Id.* at 6.

84. On or about June 30, 2025, DOE began sending a letter (“June 30 Letter”, Exhibit 3) to some Plaintiff States describing the Policy Flash and enclosing a fact sheet titled “Indirect Percentage (%) Cap Against Total Award Fact Sheet” (“Fact Sheet”, Exhibit 4) that contains responses to “Frequently Asked Questions” regarding the Policy Flash.

85. The Fact Sheet claims that “a percentage cap on indirect cost recovery is not an indirect rate cap.” Ex. 4 at 1. It states that “[a] cap on an indirect rate means the organization cannot bill more than a specified indirect billing rate against the allocable cost base. A cap on the indirect cost percentage (%) of the total award means the Recipient shall utilize an approved rate, but the resulting reimbursable costs for fringe and indirect costs cannot exceed the percentage cap”—that is, 10% “of the total award value.” *Id.* at 2.

86. The Fact Sheet states that State agencies “can use approved rates and allocation methodology from their Cognizant Agency; however, if the dollar amount of indirect costs under the approved rates exceeds the cap amount, the amount more than the cap is not allowed, and rates may need to be adjusted downward.” *Id.* at 3.

87. The Fact Sheet was accompanied by Narrative Calculation Guidance with an eight-step calculation procedure and an example calculation spreadsheet. Ex. 5.

88. The Narrative Calculation Guidance acknowledges that “[s]ince the final award amount depends on the proposed budget (which includes both direct and indirect costs), you’ll need to use an iterative process to ensure the indirect costs stay within the funder’s cap (e.g., ‘indirect costs cannot exceed X% of the total award’).” *Id.* at 1.

89. The Policy Flash is contrary to the regulatory framework described above in three key respects.

90. First, the Policy Flash contravenes the basic requirement in 2 C.F.R. § 200.402 that a federal award be comprised of all allowable direct costs and allocatable indirect costs. *See also id.* §§ 200.403, 200.405. Contrary to this command, the Policy Flash excludes allowable fringe costs and allocatable indirect costs by directing States to limit fringe and indirect costs to under a total of 10% of the total award amount.

91. Second, DOE must “accept[]” State agencies’ negotiated indirect cost rates. 2 C.F.R. § 200.414(c)(1). Under the Policy Flash, however, DOE will reject those rates and impose its own cap.

92. Moreover, the Policy Flash does not—and does not even purport to—meet the strict requirements for deviation from negotiated rates provided by 2 C.F.R. § 200.414(c).

93. The Policy Flash is not “required by Federal statute or regulation.” 2 C.F.R. § 200.414(c)(1). Nor does it meet *any* of the requirements for a deviation under § 200.414(c). It does not apply only to “a class of Federal awards or a single Federal award,” *see* 2 C.F.R. § 200.414(c)(1); rather, it applies to all DOE awards to States and local governments, in perpetuity. The Policy Flash does not make “publicly available, the policies, procedures and general decision-making criteria that their programs will follow to seek and justify deviations from negotiated rates,” 2 C.F.R. § 200.414(c)(3), as there are no such policies, procedures, or general decision-making criteria since DOE set a blanket rate applicable to all State and local applicants, forever.

94. And as to what DOE terms “conditional” awards (that is, “awards for prior Notices of Funding Opportunity or Funding Opportunity Announcements where negotiations are not yet complete and/or the Award has not been executed,” Ex. 1 at 3), the Policy Flash also fails to satisfy 2 C.F.R. § 200.414(c)(4), which requires indirect cost rates to be made available in the Notice of

Funding Opportunity, because those Notices were issued before the Policy Flash and did not make the terms of the Policy Flash cap available to the applicants.

95. Additionally, the Policy Flash is in conflict with 2 C.F.R. § 200.414(f), which sets a 15% de minimis indirect cost rate where no NICRA is in place, as the effect of the Policy Flash in many cases is to set indirect costs below 15%. It is also in conflict with regulations providing for cost sharing under particular circumstances not present here. *See, e.g.*, 2 C.F.R. § 200.306(b-c).

96. Third, the Policy Flash is unlawful because it limits allowable fringe costs. Limiting fringe costs violates 2 C.F.R. § 200.431, which provides that fringe costs are “allowable” so long as they are provided under established written leave policies and, where applicable, meet other regulatory requirements.

97. The Policy Flash is also arbitrary and capricious.

98. The Policy Flash offers conclusory and unsupported reasoning. It asserts that it will “improve efficiency,” Ex. 1 at 3, but does not explain what efficiency means in this context, how or why it will be improved by the Policy Flash, or what data, if any, the agency reviewed to arrive at its conclusion. The Policy Flash states that it is intended to balance “the financial needs of financial assistance award recipients with the Department’s obligation to responsibly manage federal funds,” *id.*, but it does not explain what those needs and obligations are and how they were taken into account or balanced.

99. The Policy Flash offers no explanation for why it set the cap at 10%, rather than, say, 30%, 15%, or 5%. Nor does the Policy Flash explain why this cap applies to fringe or to indirect costs, let alone why it applies to both. Nor does it explain why it applies to funding without Notices of Funding Opportunity, when only those awards are specifically described.

100. The Policy Flash does not explain its substantial change from current practice, which awards indirect costs at the negotiated rate and fringe according to settled accounting principles. Nor did it consider the serious administrative complexities that would arise from the Policy Flash. In the Narrative Calculation Guidance, for example, DOE explains that the cap will require a new, complex, eight-step “iterative process.” Ex. 5 at 1.

101. The Policy Flash fails to account for the reliance interests of Plaintiff States and their agencies. Plaintiff States have structured their budgets with the understanding that federal agencies will pay their legally required indirect and fringe cost reimbursements. Plaintiff States’ cost structures are fundamentally incompatible with the Policy Flash as Plaintiff States’ indirect costs and fringe costs each typically exceed 10% of the total award amount. Plaintiff States have accordingly made costly decisions about long-term investments in reliance on their negotiated rates.

102. For example, the Colorado Energy Office (CEO) has statutory requirements on how it must use much of its funding; CEO has hired staff to ensure the agency maintains compliance with its federal grants, and these costs cannot be paid with state funds. In addition, because the Colorado payroll system requires both an employee’s salary and fringe benefits to come from the same account or set of funds, CEO cannot simply rearrange funds to pay staff fringe benefits from a different account.

103. As another example, the policy shift to cap indirect cost reimbursement and include fringe benefits in those capped costs will result in unrecoverable expenses of approximately \$230,000 annually for Kentucky. This will impair the Commonwealth’s ability to support essential employees’ direct costs and may result in increasing costs should the state move to alternative employment arrangements.

V. Harm to States

104. The Policy Flash will cause immediate irreparable harm to Plaintiff States unless enjoined.

105. Plaintiff States will be harmed by the Policy Flash because their State agencies cannot sustain DOE-sponsored grants if the maximum reimbursable dollar amount for indirect and fringe costs is capped at 10% of the total award amount. Plaintiff States rely on these grants to implement clean energy generation and energy efficiency projects; fund weatherization assistance grants to help reduce energy bills for income-qualified residents; provide technical assistance and modeling support for state energy planning processes; and support emergency preparedness efforts, including nuclear emergencies. Plaintiff States' agencies will not be able to maintain these programs and activities at current levels and may be forced to abandon numerous projects and lay off staff.

106. Plaintiffs States will also be harmed by the application of the 10% cap to their subrecipients. Capping reimbursement of indirect and fringe costs at 10% of the total subaward may be untenable for many subrecipients, and as a result, Plaintiff States may lose the ability to engage subrecipients to meet award objectives.

107. This harm is immediate and ongoing, as DOE has already begun implementing the Policy Flash as to Plaintiff States.

108. DOE operates the State Energy Program (SEP), which is intended to maximize the benefits of energy efficiency and renewable energy in each state and to help states improve the security of their energy infrastructure by assisting them with the development of state energy plans. SEP provides financial and technical assistance to states through formula and competitive grants.

States use their formula grants to develop state strategies and goals to address their energy priorities.

109. Plaintiff States regularly receive SEP formula grants to support programs that help lower energy costs, secure the grid, and provide local economic stability.

110. For example, in New York, NYSERDA uses SEP formula grants to track and plan for its long-term energy requirements and supply chain resiliency. In Colorado, CEO uses SEP formula grants to understand investment opportunities for advanced energy technologies. And the Minnesota Department of Commerce uses SEP formula grants to interface with and provide technical assistance to innovators, investors, policy makers, regulators, developers, producers and consumers to meet energy resource needs and drive economic development.

111. SEP formula grants are awarded to states on a rolling basis, with an application deadline for a different set of States at three different times of year.

112. In or around April 2025, a number of Plaintiff States, including New York, Colorado, Minnesota, and Oregon submitted their applications for the SEP formula grants. States submit their applications for SEP formula grants on cycles. Not all states needed to submit their new applications in April, but all states will eventually need to do so.

113. On or about July 1, 2025, DOE began to send letters to some Plaintiff States stating that the Policy Flash applies and directing Plaintiff States to submit a revised budget conforming to the 10% cap set out in the Policy Flash.

114. On or about July 1, 2025, DOE started rejecting the applications of some Plaintiff States, stating that the Policy Flash applies and directing Plaintiff States to submit a revised budget conforming to the 10% cap set out in the Policy Flash.

115. The emails enclosing the rejections stated:

In light of Policy Flash 2025-25, [DOE] needs you to bring your budget into compliance with our new financial assistance policy for State and Local governments. The indirect and fringe costs combined must total less than 10% of the total project proposed. Any application where the total indirect cost plus fringe cost proposed is greater than 10% of the total application's project will be rejected. . . . In many occasions, this policy flash will result in significantly altered budget proposals

116. The rejection emails contained a copy of the June 30 Letter, the Fact Sheet, and the attachments to the fact sheet described above. *Supra* ¶¶ 83-87.

117. On August 4, 2025, DOE sent an email to State Energy Agencies setting forth deadlines for the States applying in April to submit revised funding applications that conform to the Policy Flash of August 7, and August 15, 2025 for states applying in the next cycle. Those emails stated: “[w]e have received confirmation that there will be no changes to the Indirect Rate policy flashes. The Department did a review and chose not to make any changes.”

118. The Policy Flash, if fully implemented, would harm Plaintiff States because Plaintiff States’ agencies will not be able to maintain programs currently supported by SEP and other DOE grants and will be forced to lay off staff, significantly scale back or halt research, and abandon critical projects.

119. If the Policy Flash is applied to Colorado’s state fiscal year 2026 SEP formula grant (which runs from July 1, 2025 to June 30, 2026), for example, the loss to Colorado would be approximately \$367,000. If applied, the Colorado Energy Office will not be able to adequately support its current staffing needs across several teams. This will severely interfere with Colorado’s ability to promote energy efficiency and implement renewable energy across the state, as implementation of the Policy Flash will be deeply damaging to CEO’s ability to staff ongoing programs to support energy security, lower energy costs, reduce greenhouse gas pollution, and enable a state-wide transition to clean energy. Should CEO not be able to recover the entire portion

of the requested fringe and indirect costs through SEP funds, it would need to reduce overall headcount and lose crucial services that support Colorado's regulatory work on energy and climate.

120. If the Policy Flash is applied to Minnesota's 2025 SEP formula funds, the Minnesota Department of Commerce (MDC) would lose approximately \$290,000, which reflects the difference between the direct labor fringe costs and the indirect costs for which the state is entitled to reimbursement and the new DOE policy. To cover this shortfall, Minnesota will need to reduce staff paid by these funds and use available funds from other programs more quickly than otherwise planned, leading to budget constraints that will impact the State's ability to meet its statutory energy efficiency and renewable energy objectives.

121. Kentucky provides DOE funds to electric cooperatives, non-profit community organizations assisting with energy conservation and affordability work, universities providing advanced energy technical assistance and energy education, and expert consultations to advance specific energy initiatives, such as microgrids for resilience and nuclear energy development. Under the indirect cost cap and the inclusion of fringe in those costs, the Commonwealth will have no choice but to limit projects using DOE funding to energy product purchases and other expenses that avoid the use of professional experts and trusted community partners for planning, analysis, and implementation.

122. Even the United States House of Representatives has noted that DOE's indirect costs policies are deeply harmful, noting that DOE "supports research and development efforts across a vast range of scientific and technological pursuits" that "often require specialized, proprietary, and cutting-edge equipment." As a result, "[a] blanket indirect cost rates policy . . . does not fully address the unique nature of the Department's research and development work."

Accordingly, the House Appropriations Committee expressed that DOE should “pause implementation of its previously announced changes” and “take into account previous indirect cost rates negotiations that have been approved by the Department.” H.R. Rep. No. 119-213, at 89-90 (2025).

VI. Every Court to Have Ruled on the Merits of Similar Indirect Cost Caps Has Held Them Unlawful

123. The Policy Flash appears to be a clumsy attempt to circumvent a number of recent Court decisions finding federal agencies—including DOE itself—to have unlawfully reduced indirect costs contrary to the established regulatory scheme.

124. DOE issued the Policy Flash three weeks after a Court issued a temporary restraining order against its unlawful imposition of a 15% indirect cost cap on institutions of higher education. *Ass’n of Am. Universities v. Dep’t of Energy*, No. 25-CV-10912-ADB, 2025 WL 1119791 (D. Mass. Apr. 16, 2025). Since that time, the Court has issued a preliminary injunction and then a final judgment vacating the policy. 2025 WL 1414135 (D. Mass. May 15, 2025) (preliminary injunction); *id.* ECF No. 71 (final judgment and vacatur entered June 30, 2025).

125. Reviewing DOE’s policy, the Court found that it violated 2 C.F.R. § 200.414(c), explaining that that regulation does not contemplate “a one fell swoop approach invalidating all pre-existing NICRAs and changing the well-established procedure for all future grants.” 2025 WL 1414135, at *15. The Court also found the rate cap policy at issue to be arbitrary and capricious because it “provide[d] no reasoned explanation for how or why the DOE concluded that indirect cost rates exceeding 15 percent do not constitute an appropriate or efficient use of DOE funds, nor does it explain how limiting funding for indirect costs would lead to that money being put to more appropriate and efficient uses.” *Id.* at *12. The Court found this “lack of reasoned explanation . . .

particularly troubling in light of decades of industry reliance on DOE’s prior policy.” *Id.* at *13 (cleaned up).

126. Prior to the Policy Flash, a preliminary and then permanent injunction had also already been issued against the National Institute of Health’s unlawful imposition of a 15% indirect cost cap on institutions of higher education. *Massachusetts v. Nat’l Insts. of Health*, 770 F. Supp. 3d 277, 287 (D. Mass. 2025) (preliminary injunction); No. 1:25-CV-10338, 2025 WL 1063760, at *2 (D. Mass. Apr. 4, 2025) (permanent injunction). The Court reviewing the NIH policy found that the rate cap at issue in that case “disregard[ed] an existing regulation and regulatory structure” and was arbitrary and capricious based on its conclusory reasoning and failure to grapple with its consequences. 770 F. Supp. 3d at 299-300, 305-07.

127. A final judgment has been issued vacating a 15% indirect cost cap issued by the National Science Foundation. *Ass’n of Am. Universities v. Nat’l Sci. Found.*, No. 1:25-CV-11231-IT, 2025 WL 1725857 (D. Mass. June 20, 2025). Again, that the court found that “[w]ith the 15% Indirect Cost Rate, NSF ha[d] rejected the regulatory framework for funding indirect research costs,” *id.* at *14, and the policy was arbitrary and capricious because it “express[ed] goals and conclusions, not reasoning,” *id.* at *17.¹

128. Most recently, a preliminary injunction was issued against the same policy at the Department of Defense. *Ass’n of Am. Universities v. Dep’t of Def.*, No. CV 25-11740-BEM, 2025 WL 2022628, at *1 (D. Mass. July 18, 2025) (“The Government has, for the fourth time, purported to announce a policy that has consistently been deemed unlawful, without acknowledgment of its

¹ In a separate case challenging NSF’s cap, a Court denied a motion for preliminary injunction in light of the decision that had already been issued in *Ass’n of Am. Universities v. Nat’l Sci. Found.* vacating that cap. See *New York v. Nat’l Sci. Found.*, No. 1:25-CV-04452-JPC (S.D.N.Y.), Minute Entry (July 11, 2025).

apparent illegality and without any attempt to structure the policy in a manner that fulfills the established requirements of law.”).

129. DOE issued the Policy Flash with minor differences to the other four policies, none of which are material to its core flaws.

130. First, DOE styles this Policy Flash as a *cost* cap instead of a *rate* cap at issue in the other cases, *see supra* ¶¶ 123-27. But through the cost cap, DOE is generating the same effect—dramatically cutting off the amount of reimbursement grantees should receive for indirect costs contrary to the regulatory scheme.

131. Reviewing prior SEP formula awards to Plaintiff States shows that the cost cap will have the same function as a rate cap. But that review requires some math.

132. As explained above, an indirect cost rate is—both historically, and by regulation—expressed as a percentage of the base direct costs, which can include fringe benefits. *See supra* ¶¶ 56-57. As an example, an award with \$80,000 in direct costs (including \$16,000 in fringe costs and \$64,000 in other direct costs), and a 50% indirect cost rate on all direct costs would result in \$40,000 of indirect costs (50% of the \$80,000) and thus a total award of \$120,000, comprised of \$16,000 in fringe, \$64,000 in non-fringe direct costs, and \$40,000 in indirect costs.

133. But the Policy Flash uses a novel calculation method. The Policy Flash limits reimbursable indirect and fringe costs to 10% of the *total* award. So, for that \$120,000 grant, the total amount of reimbursable indirect and fringe costs would be capped at \$12,000, even though there are \$16,000 in fringe costs and \$40,000 in indirect costs. In this example, DOE would require the State to submit a budget that limits the total of its indirect and fringe costs to \$12,000, resulting in a loss of \$44,000 in funding that would otherwise have been allowable and allocable. The effect

of this novel calculation is that the previously approved mix of costs is now contrary to the 10% cap imposed by the Policy Flash.

134. Applying DOE's calculation method to past SEP formula funding awards shows that indirect costs and fringe each often exceed 10% of the total award amounts.

135. For example, applying DOE's calculation to awards to the New York State Energy Research and Development Authority (NYSERDA) on DOE SEP formula grants from 2022 to 2024, indirect costs ranged from 34% to 40% of the total award amounts. Applying DOE's calculation to awards to NYSERDA on DOE SEP formula grants from 2022 to 2024, fringe benefits costs ranged from 18% to 30% of the total award amounts.

136. The Oregon Department of Energy (ODOE) receives funding from DOE through State Energy Program ("SEP") grants. In fiscal year 2024, ODOE received \$785,910 through the SEP Formula grant program. This included \$179,775 in indirect costs and \$153,484 in fringe benefits. Thus, in fiscal year 2024, indirect costs represented 22.87% of ODOE's total SEP Formula grant award and fringe benefit costs represented 19.53% of ODOE's total SEP Formula grant award.

137. The Minnesota Department of Commerce (MDC) also receives SEP funding from DOE. In fiscal year 2024, MDC received \$2,461,734.39 through the SEP formula grant program, which included \$220,170 in indirect costs and \$307,103 in fringe benefits. Thus, in fiscal year 2024, indirect and fringe costs together represented 21.4% of MDC's total grant award.

138. In state fiscal year 2025, the Colorado Energy Office (CEO) received \$960,740 in new funding and \$346,558 in unobligated funds from state fiscal year 2024. This included \$378,243 in indirect costs and \$175,944 in fringe benefits. Thus, in state fiscal year 2025, indirect and fringe benefit costs represented roughly 42% of CEO's total grant award.

139. The Policy Flash would reduce the sum of indirect costs and fringe benefits costs to no more than 10% total. As these calculations demonstrate, that would be a significant reduction from historical awards, thus functioning as a rate cap.

140. Second, the Policy Flash claims that States will “continue to utilize their negotiated and approved indirect cost rate(s),” Policy Flash, Ex. 1 at 4, whereas prior policies did not contain such a statement. For example, the vacated DOE policy stated that DOE would “no longer use the negotiated indirect cost rate for grants awarded to IHEs.”²

141. But States will not “utilize” their negotiated indirect cost rates as the Policy Flash directs them to use a different, lower rate. Notwithstanding this statement, the Policy Flash in fact forecloses States from utilizing their indirect cost rates because, by capping indirect costs and fringe benefits to 10% of the total award, the policy forces States to adopt a different, lower indirect cost rate. *See also* Fact Sheet, Ex. 4 at 4 (States will need to “determine how to adjust their budget[s] to ensure the cap is not exceeded.”); FAL, Ex. 2 at 6 (“Applicants and recipients must ensure that the sum of indirect costs and fringe benefits in the proposed budget do not exceed the maximum percentage allowed against the total award”).

142. Moreover, whether or not a State “utilize[s]” the negotiated rate is legally irrelevant because DOE must *accept* those rates, which, under the Policy Flash, it will not do. *See* Policy Flash, Ex. 1 at 4 (“[T]he Department will establish a maximum dollar amount that it will reimburse under Awards to state and local governments”); *see also* FAL, Ex. 2 at 4-5 (“The maximum amount of funds that may be paid or reimbursed to a recipient for indirect and fringe benefits costs . . .

² DOE Policy Flash 2025-22 (vacated in *Ass’n of Am. Universities v. Dep’t of Energy*, No. 25-CV-10912-ADB, (D. Mass. June 30, 2025)), available at <https://www.energy.gov/management/pf-2025-22-adjusting-department-energy-grant-policy-institutions-higher-education-ihe>.

may deviate from the recipient’s negotiated indirect cost rates”); *id.* at 6 (“If an applicant’s NICRA . . . rate yields higher indirect cost amounts than the . . . limitation allows, the limited amount must be used.”).

143. Third, although the previous cases involved indirect rate caps imposed on institutions of higher education rather than to States, that difference is irrelevant because DOE applies the very same regulations to determine the indirect cost rates it has long negotiated with state grantees.

144. Finally, the inclusion of fringe costs within the cap creates an *additional* basis for liability for DOE. The Policy Flash’s 10% cap applies to the total of indirect costs *and* fringe benefit costs, whereas the prior policies applied only to indirect costs. Doing so contravenes regulations mandating the reimbursement of fringe benefits. *See supra* ¶¶ 43, 45.

CAUSES OF ACTION

Count I

Administrative Procedure Act, 5 U.S.C. § 706(2)(A) Agency Action Contrary to Law

145. Plaintiff States reallege and incorporate by reference the allegations contained in each of the preceding paragraphs as if fully set forth herein.

146. The APA requires a court to “hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A).

147. DOE is an “agency” under the APA, 5 U.S.C. § 551(1), and the Policy Flash is “agency action” subject to review under the APA, 5 U.S.C. § 551(13).

148. The Policy Flash is contrary to law including, but not limited to, in the following ways:

149. Because DOE is not calculating awards as the sum of allowable direct and allocable indirect costs, the Policy Flash violates 2 C.F.R. §§ 200.402, 200.403, 200.405.

150. Because DOE is not accepting State agencies' negotiated indirect cost rates, the Policy Flash violates 2 C.F.R. § 200.414(c).

151. Because DOE is excluding allowable fringe costs from its calculations of awards, the Policy Flash violates 2 C.F.R. § 200.431.

152. Pursuant to 5 U.S.C. § 706 and 28 U.S.C. § 2201, Plaintiff States are entitled to an order and judgment, and to a preliminary and permanent injunction, holding unlawful and vacating the Policy Flash and enjoining any act to implement the Policy Flash, including, but not limited to the FAL, June 30 Letter, Fact Sheet, and any communications requiring Plaintiff States to comply with the Policy Flash.

Count II

Administrative Procedure Act, 5 U.S.C. § 706(2)(A) Arbitrary and Capricious

153. Plaintiff States reallege and incorporate by reference the allegations contained in each of the preceding paragraphs as if fully set forth herein.

154. The APA requires a court to “hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A).

155. DOE is an “agency” under the APA, 5 U.S.C. § 551(1), and the Policy Flash is “agency action” subject to review under the APA, 5 U.S.C. § 551(13).

156. The Policy Flash is arbitrary and capricious including, but not limited to, in the following ways:

157. The Policy Flash is conclusory and violates DOE's obligation to examine the relevant data and articulate a satisfactory explanation for the decision, including a rational connection between the facts found and choices made. The Policy Flash offers no explanation for why the indirect cost and fringe benefits cap is set at 10% of the total award amount.

158. The Policy Flash ignores obvious problems with its categorical 10% cap, including how that cap will thwart the purposes of DOE awards and reduce resource sharing.

159. The Policy Flash does not explain its substantial change from current practice, which awards indirect costs at the negotiated rate and fringe according to settled accounting principles.

160. The Policy Flash fails to account for the reliance interests of Plaintiff States and their agencies.

161. Pursuant to 5 U.S.C. § 706 and 28 U.S.C. § 2201, Plaintiff States are entitled to an order and judgment, and to a preliminary and permanent injunction, holding unlawful and vacating the Policy Flash and enjoining any act to implement the Policy Flash, including, but not limited to, the FAL, June 30 Letter, Fact Sheet, and any communications requiring Plaintiff States to comply with the Policy Flash.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff States pray that this Court:

- a. Enter an order pursuant to 5 U.S.C. § 706(2) holding unlawful and vacating the Policy Flash;
- b. Enter a declaratory judgment finding that the Policy Flash is invalid, arbitrary and capricious, and contrary to law;

- c. Issue preliminary and permanent injunctive relief barring implementation of the Policy Flash in Plaintiff States,³ including through the FAL, June 30 Letter, Fact Sheet, and any communications requiring Plaintiff States to comply with the Policy Flash, and barring Defendants from otherwise limiting reimbursement for indirect costs or fringe costs in Plaintiff States except as permitted by statute and regulation;
- d. Award Plaintiff States their reasonable fees, costs, and expenses, including attorneys' fees, pursuant to 28 U.S.C. § 2412; and
- e. Award such other relief as this Court may deem just and proper.

DATED: August 15, 2025

s/ Brian Simmonds Marshall

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³ Plaintiff States include relevant subdivisions and instrumentalities.

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EXHIBIT 1



U.S. DEPARTMENT
of ENERGY

Office of Management PF 2025-25 Adjusting Department of Energy Financial Assistance Policy for S...

PF 2025-25 Adjusting Department of Energy Financial Assistance Policy for State and Local Governments' Financial Assistance Awards

PF 2025-25 Adjusting Department of Energy Financial Assistance

Policy for State and Local Governments' Financial Assistance Awards

Date: May 08, 2025

To: HCAs/Procurement Directors/Contracting Officers/Financial Assistance and Agreements Officers

From: Director, Office of Acquisition Management

BACKGROUND: Pursuant to 5 U.S.C. 553(a)(2), the Department of Energy ("Department") is updating its policy with respect to Department financial assistance funding awarded to state and local governments. Through its financial assistance programs (which include grants and cooperative agreements), the Department funds research, development, and deployment projects and activities in furtherance of its mission consistent with its policies and priorities. A portion of the funding provided pursuant to a DOE financial assistance agreement ("Award") goes to "indirect costs," sometimes referred to as facilities and administration (F&A) costs. Facilities costs can sometimes be comprised of such things as depreciation of buildings, rent, equipment, capital improvements, and other operations and maintenance expenses, while administration costs can include such things as general expenses for administrative salaries and fringe benefits such as insurance and paid time off, accounting, office supplies, payroll, and other general administration costs.

While the Department is aware that many Award recipients use indirect cost payments to effectuate activities funded by the Department's financial assistance awards, these indirect cost payments are not for funding the Department's direct project activities. As these funds are entrusted to the

Department by the American people, the Department must ensure it is putting funds to appropriate use on financial assistance programs. To improve efficiency and curtail costs where appropriate, the Department seeks to better balance the financial needs of financial assistance award recipients with the Department's obligation to responsibly manage federal funds.

Accordingly, this policy flash announces the Department's updated policies, procedures, and general decision-making criteria for establishing standards (and limits) for payment of indirect costs related to financial assistance awarded to state and local governments. When awarding financial assistance to state and local governments these policies, procedures, and criteria are intended to better balance the Department's dual responsibilities to financial assistance award recipients and the American people.

Effective immediately, this guidance only applies to new or conditional Awards with state and local governments. New Awards are considered to be Awards issued under Notices of Funding Opportunity yet to be released. Conditional Awards are awards for prior Notices of Funding Opportunity or Funding Opportunity Announcements where negotiations are not yet complete and/or the Award has not been executed. This guidance does not apply to tribal entities.

ESTABLISHING APPROPRIATE INDIRECT COST REIMBURSEMENT LIMITS:

At present, the indirect cost rate for state and local government financial assistance Awards is typically negotiated by one of nine other Federal agencies, depending on the state and local governmental entity involved, see 2 C.F.R. 200, app. V(F)(1). The Department plans to establish a new policy on the payment of indirect costs under Awards to state and local governments. The Department plans to establish a maximum allowable dollar amount (stated in terms of a percentage of the total project award amount) that it will reimburse for allowable, allocable, and reasonable indirect costs under Awards. The percentage that will be reimbursable is inclusive of total indirect costs and fringe benefit costs.

For the reasons set forth in this memorandum, for New Awards, recipients should continue to utilize their negotiated and approved indirect cost rate(s) in applications for Awards, but the Department will establish a maximum dollar amount that it will reimburse under Awards to state and local governments. The maximum limit of funds to be paid or reimbursed to a new Award recipient as indirect costs will be calculated as a percentage of the total project award amount and will be included in the Award terms as a cap. For state and local government financial assistance awards, this maximum percentage is 10 percent (10%).

All New Awards to state and local governments will mandate that the Department will limit the payment or reimbursement of all allowable, allocable, and reasonable indirect costs to a maximum of ten percent (10%) of the total project award amount. This policy will better balance the Department's twin aims of funding meaningful financial assistance programs to stimulate a public purpose, such as improved infrastructure or technology deployment, and upholding its fiduciary Federal Stewardship obligations to the American people.

In circumstances where the Secretary has determined it is necessary and appropriate, the dollar threshold for reimbursement of indirect costs may be modified for Award(s) to state and local governments that are subject to this policy.

Additional information is forthcoming.

For DOE questions concerning this policy flash, please email:

DOE_OAPMPolicy@hq.doe.gov

Previous Policy Flashes

PF 2025-23 Compliance With Federal Anti-

Discrimination Laws

PF 2025-24 Rescission of Policy Flash 2025-19 Notification of Court Order Related to DEI Executive Orders

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EXHIBIT 2

**Department of Energy
Financial Assistance Regulations**

**No.: FAL 2025-05
Date: June 30, 2025**



FINANCIAL ASSISTANCE LETTER

This Financial Assistance Letter is issued under the authority of the Senior Procurement Executives of DOE and NNSA

**Subject: Implementation of Indirect and Fringe Benefits Cost Reimbursement
Limits on Financial Assistance Awards**

References:

Pursuant to 5 U.S.C. 553(a)(2).

- Policy Flash 2025-25 Adjusting Department of Energy Financial Assistance Policy for State and Local Governments' Financial Assistance Awards
- Policy Flash 2025-26 Adjusting Department of Energy Financial Assistance Policy for Nonprofit Organizations' Financial Assistance Awards
- Policy Flash 2025-27 Adjusting Department of Energy Financial Assistance Policy for For-Profit Organizations' Financial Assistance Awards

When is this Financial Assistance Letter (FAL) effective?

This FAL is effective upon issuance.

When does this FAL expire?

This FAL remains in effect until canceled or superseded.

Who is the point of contact?

For Department of Energy (DOE), contact the Contract and Financial Assistance Policy Division, Office of Policy in the Office of Acquisition Management at DOE_oapmpolicy@hq.doe.gov.

For National Nuclear Security Administration (NNSA), please contact the Acquisition Policy and Oversight Division, Policy & Oversight Branch (NA-PAS-111), at (505) 845-5639.

Who is the intended audience?

This FAL guidance is intended for DOE and NNSA Grant Officers. Unless otherwise stated, any reference to DOE or the Department should be understood to include the NNSA.

What is the purpose of this FAL?

The purpose of this FAL is to provide information and guidance on DOE's implementation of the indirect cost and fringe benefit reimbursement limit in financial assistance awards. The reimbursement limit will be calculated as a percentage of the Total Award Amount and specified in the award terms and conditions as a maximum dollar amount to be used for indirect costs and fringe benefits.

What types of actions are affected by this FAL?

This FAL applies to all DOE notice of funding opportunities (NOFOs) and financial assistance actions where funds are appropriated or otherwise made available and used for financial assistance awards to For-Profit Organizations, Nonprofit Organizations, and State and Local Governments.

What is the background?

Through its financial assistance programs DOE uses financial assistance awards to fund research, development, and deployment activities aligned with its mission, policies, and priorities. As part of these awards, a portion of the funding provided by DOE to recipients is allocated to cover indirect costs and fringe benefits.

While DOE acknowledges that many recipients use indirect cost payments to support the overall execution of activities funded through DOE financial assistance, these payments are not directly allocated to specific project tasks. As stewards of taxpayer funds, the Department has a responsibility to ensure that these resources are used appropriately and effectively.

To enhance efficiency and control costs where appropriate, DOE has pursued a more balanced approach that considers both the financial needs of award recipients and the Department's responsibility to manage federal funds effectively. As a result, DOE is implementing a policy to set a dollar limit on the reimbursement of all allocable, reasonable, and allowable indirect costs—including fringe benefits—based on a maximum percentage of the Total Award Amount.

This policy aims to strike a better balance between the Department's commitment to funding impactful financial assistance programs that advance public purposes and its fiduciary responsibility to uphold strong federal stewardship on behalf of the American people.

What is the instruction/guidance in this FAL?

Sections

- A. Definitions
- B. Applicability
- C. Implementation

Appendix 1: Language for Notice of Funding Opportunity (NOFO)
Appendix 2: Language for Award Terms and Conditions

A. Definitions

Direct Cost, as defined in 2 CFR 200.413, are those costs that can be identified specifically with a particular final cost objective, such as a Federal award, or other internally or externally funded activity, or that can be directly assigned to such activities relatively easily with a high degree of accuracy.

For-Profit organization, as defined in 2 CFR 200.1, generally means an organization or entity organized for the purpose of earning a profit. The term includes but is not limited to:

- (1) An “S corporation” incorporated under subchapter S of the Internal Revenue Code;
- (2) A corporation incorporated under another authority;
- (3) A partnership;
- (4) A limited liability company or partnership; and
- (5) A sole proprietorship.

Indirect Cost, as defined in 2 CFR 200.1, means those costs incurred for a common or joint purpose benefiting *two or more* cost objectives (e.g., project, award, or activity) and not readily assignable to the cost objectives specifically benefitted, without effort disproportionate to the results achieved.

Local Government, as defined in 2 CFR 200.1, means any unit of government within a State, including a:

- (1) County;
- (2) Borough;
- (3) Municipality;
- (4) City;
- (5) Town;
- (6) Township;
- (7) Parish;
- (8) Local public authority, including any public housing agency under the United States Housing Act of 1937;
- (9) Special district;
- (10) School district;
- (11) Intrastate district;
- (12) Council of governments, whether or not incorporated as a nonprofit corporation under

- State law; and
- (13) Any other agency or instrumentality of a multi-, regional, or intra-State or local government.

Nonprofit organization, as defined in 2 CFR 200.1, means any organization that:

- (1) Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;
- (2) Is not organized primarily for profit;
- (3) Uses net proceeds to maintain, improve, or expand the organization's operations; and
- (4) Is not an Institute of Higher Education (IHE).

State, as defined in 2 CFR 200.1, means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any agency or instrumentality thereof exclusive of local governments.

Total Award Amount is the total sum of Federal and non-Federal share consisting of allowable direct and indirect costs.

B. Applicability

The requirements of the indirect cost reimbursement limitations are applicable to new financial assistance awards executed on or after May 8, 2025, including fully conditional awards,¹ to the following Non-Federal Entities:

- **For-Profit Organizations**
- **Nonprofit Organizations**
- **State and Local Governments**

Any subrecipient organization shall also adhere to the indirect cost reimbursement limitations set forth in 2 CFR 200.322.

C. Implementation

The maximum amount of funds that may be paid or reimbursed to a recipient for indirect and fringe benefits costs will be calculated as a percentage of the project's Total Award Amount. This amount will be stated as a **maximum dollar value** in the award terms and conditions. The percentage used to calculate the reimbursement limitations are as follows:

- **For-Profit Organizations:** up to **15%** of the Total Award Amount
- **Nonprofit Organizations:** up to **15%** of the Total Award Amount
- **State and Local Governments:** up to **10%** of the Total Award Amount

¹ Fully conditional awards are signed by the Grants Officer where funds are obligated but not released to the recipient.

Financial assistance awards are governed by 2 CFR 200 as adopted and supplemented by 2 CFR 910. 2 CFR 200.414(c) addresses the use of a recipient's negotiated indirect cost rate agreement (NICRA). The percentages listed above may deviate from the recipient's negotiated indirect cost rates specified in the award.

Therefore, Grants Officers must:

1. Include the provision specified in Appendix 1 in each applicable Notice of Funding Opportunity (NOFO).
2. Ensure that each initial and subsequent negotiated and approved budget includes the appropriate percentage limit in the Total Award Amount, when applicable.
3. Include the award term, outlined in Appendix 2, in the award terms and condition in all applicable financial assistance awards.

D. Monitoring During Award Period:

Throughout the life of the award, the Department will monitor progress reports, financial reports and invoices to ensure compliance with the established indirect cost reimbursement limitations.

E. Award Closeout and Compliance:

At award closeout—whether it is resulting from the completion of the project or the termination of work or activities under the award (unilateral or mutual)—the Department will assess whether the total indirect costs and fringe benefits paid or reimbursed to the recipient exceed the applicable percentage of the current Total Award Value. If a recipient has received reimbursement beyond the permitted limit, the recipient will be deemed noncompliant with the terms and conditions of the award.

In such cases, the Grants Officer must take corrective action, which includes requiring the recipient to refund the excess amount in accordance with 2 CFR 200.346 and may also implement additional remedies for noncompliance as provided under 2 CFR 200.339 and 2 CFR 910.372.

Appendix 1

Sample Language for Notice of Funding Opportunity (NOFO)

Limitation on Indirect Costs

DOE has established a maximum dollar amount that it will reimburse for indirect costs and fringe benefits under its financial assistance awards. The maximum amount of funds to be paid or reimbursed under an award for indirect costs and fringe benefit costs will be calculated as a percentage of the Total Award Amount and the maximum dollar amount will be included in the award terms and conditions.

For for-profit organizations, this maximum dollar amount is calculated as fifteen percent (15%) of the Total Award Amount. For nonprofit organizations, this maximum dollar amount is calculated as 15 percent (15%) of the Total Award Amount. For state and local governments, this maximum dollar amount is calculated as 10 percent (10%) of the Total Award Amount.

The Total Award Amount is the sum of total direct costs and indirect cost amounts and comprised of the Federal and, as applicable, the required non-Federal cost share. The maximum indirect and fringe benefits cost reimbursement amount (limitation) applies to all budget periods negotiated at the time of the award and will be adjusted should a modification change the Total Award Amount. The limitation applies to the total award across all budget periods. For multi-year awards, applicants must ensure the indirect costs for each year collectively do not exceed the limitation of the Total Award Amount.

Applicants and recipients must ensure that the sum of indirect costs and fringe benefits in the proposed budget do not exceed the maximum percentage allowed against the total award. For example, a 15% reimbursement limit against a Total Award Amount of \$100,000 means the total indirect costs and fringe benefits may not exceed \$15,000, leaving \$85,000 for direct costs. This limit applies regardless of an applicant's negotiated indirect cost rate agreement (NICRA), rate proposal, or the election of the de minimis rate (15% of modified total direct costs per 2 CFR 200.414(f)). If an applicant's NICRA or de minimis rate yields higher indirect cost amounts than the 15% limitation allows, the limited amount must be used.

Applicants should apply a consistent accounting methodology when allocating their indirect rates (e.g., NICRA, Rate Proposal, or de minimis rate per 2 CFR 200.414(f)), that the organization utilizes to develop the indirect rates, to the maximum extent possible without exceeding the reimbursement limit.

Subrecipients: The indirect cost reimbursement limit applies to the prime recipient and subrecipients, as applicable. Budgets for subawards must also comply with the limitation based on entity type (i.e., for-profit, nonprofit, or state and local government). The maximum amount of funds to be paid or reimbursed from the recipient to a subrecipient for its indirect costs and fringe benefits under a subaward will be calculated as a percentage (%) of the total subaward amount, inclusive of the Federal and applicable non-Federal cost share amount.

Key Definitions per 2 CFR 200.1:

Direct Costs are project costs which can be solely attributed to a specific project, award, or activity with a high degree of accuracy.

Indirect Costs are those costs incurred for a common or joint purpose benefiting *two or more* cost objectives (e.g., project, award, or activity) and not readily assignable to the cost objectives specifically benefited, without effort disproportionate to the results achieved.

Calculating the amount of reimbursable indirect and fringe benefit costs:

Developing and applying the indirect cost and fringe benefit reimbursement limit as a percentage of the Total Award Amount requires a flexible and iterative approach during budget planning.

To remain compliant, the budget must be structured so that **indirect cost and fringe benefit reimbursement does not exceed the applicable percentage of the Total Award Amount** (e.g., "indirect costs cannot exceed 10% or 15% of the total award, as applicable"). This may require multiple rounds of budget adjustments to align the proposed costs with the allowable limitations.

.....
Additional guidance on calculating the allowable indirect cost reimbursement, including a list of frequently asked questions (FAQs) is available [LINK].

Budget Submission Requirements

Detailed Budget: Use the provided budget template.

Compliance

DOE will monitor indirect cost and fringe benefits expenditures throughout the award period to ensure compliance with the established limitation. Any costs that exceed this limitation will be considered unallowable and may result in repayment by the recipient or other corrective actions, as appropriate. Applicants are responsible for maintaining accurate financial records and reporting indirect costs and fringe benefits in accordance with 2 CFR 200.

Waivers to Indirect Reimbursement Limitation

Only in circumstances where the Secretary has determined it is necessary and appropriate, the dollar threshold for payment of indirect costs and fringe benefits may be modified.

Appendix 2

Language for Award Terms and Conditions

Grant Officers must incorporate the following limitations under the Indirect Term of the Award Terms and Conditions to address the indirect cost percentage limitations.

Indirect Cost Reimbursement Limitations

Applicable to State and Local Governments (otherwise delete)

In accordance with DOE Policy, while the recipient may allocate the listed indirect cost rates above, the recipient is limited to a **maximum percentage of 10% of the Total Award Amount for reimbursement of indirect costs and fringe benefits costs.**

Therefore, the limitation for indirect cost and fringe benefits reimbursement on this award is \$[###,###] or no more than **10%** of the total award. These costs shall not be billed to the Government until there is an immediate disbursement need based on an allocation of the indirect billing rate(s) to direct project cost.

Applicable to Non-profit and For-Profit organizations (otherwise delete)

In accordance with DOE Policy, while the recipient may allocate the listed indirect cost rates above, the recipient is limited to a **maximum percentage of 15% of the Total Award Amount for reimbursement of indirect costs and fringe benefits costs.**

Therefore, the limitation for indirect cost and fringe benefits reimbursement on this award is \$[###,###] or no more than **15%** of the total award. These costs shall not be billed to the Government until there is an immediate disbursement need based on an allocation of the indirect billing rate(s) to direct project cost.

Applicable to organizations with burdened labor rates (otherwise delete)

In accordance with DOE Policy, the recipient is limited to a **maximum percentage of [insert 10% or 15%] of the Total Award Amount for reimbursement of indirect costs.** The approved budget reflects the labor billing rates with the maximum allowed for billing purposes.

Subrecipient Indirect Costs (If Applicable):

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

DOE has established a maximum dollar amount that it will reimburse as indirect costs and fringe benefit costs under a financial assistance award, to include the subaward. The maximum amount of funds to be paid or reimbursed from the recipient to a subrecipient for subrecipient indirect and fringe benefit costs under a subaward will be calculated as a percentage (%) of the total subaward amount, inclusive of the Federal and non-Federal cost share amounts.

For for-profit organizations, the maximum reimbursement amount is fifteen percent (15%) of the Total Award Amount. For nonprofit organizations, the maximum reimbursement amount is 15 percent (15%) of the Total Award Amount. For state and local governments, the maximum reimbursement amount is 10 percent (10%) of the Total Award Amount.

The Total Award Amount is comprised of the Federal and any required non-Federal cost share and includes the sum of total direct costs and indirect cost amounts. The maximum indirect and fringe benefits cost reimbursement amount applies to all budget periods negotiated at the time of the award and will be adjusted should a modification change the Total Award Amount. The maximum reimbursement amount applies to the total award across all budget periods. For multi-year awards, applicants must ensure the indirect costs and fringe benefits for each year collectively do not exceed the reimbursement limitation in terms of the applicable percentage of the Total Award Amount.

(End of Document)

EXHIBIT 3



Department of Energy

June 30, 2025

Erik Yatto
New York State Energy Office

SUBJECT: Indirect Cost Reimbursement to State and Local Governments, For-Profit Organizations, and Nonprofit Organizations

The Department of Energy (DOE) has updated its policy regarding financial assistance funding awarded to state and local governments, for-profit organizations, and nonprofit organizations. Policy Flashes [\(PF\) 2025-25, "Adjusting Department of Energy Financial Assistance Policy for State and Local Governments' Financial Assistance Awards"](#), [PF 2025-26, "Adjusting Department of Energy Financial Assistance Policy for Nonprofit Organizations' Financial Assistance Awards"](#), and [PF 2025-27, "Adjusting Department of Energy Financial Assistance Policy for For-Profit Organizations' Financial Assistance Awards"](#) announce updates to policies, procedures, and decision-making criteria for setting standards and limits on indirect cost payments for financial assistance awarded to the aforementioned entities. These updates, pursuant to 5 U.S.C. 553(a)(2), aim to improve efficiency and responsibly manage federal funds, balancing the financial needs of award recipients with the DOE's stewardship obligations to the American people.

Effective immediately, this guidance applies to **new and conditional awards** to the entities listed within the Policy Flashes. New Awards are those issued under Notices of Funding Opportunity (NOFO), but not yet to be released. Conditional Awards are awards for prior NOFOs or Funding Opportunity Announcements (FOAs) where negotiations are not yet complete and/or the Award has not been executed.

This guidance does not apply to Tribal entities.

Recipients and subrecipients that are one of the listed entities should continue using their negotiated and approved indirect cost rate methodology in applications for new awards. However, the DOE will cap the maximum reimbursement amount within the award terms, based on the percentages listed below.


Recipient Type	Maximum Indirect Cost Reimbursement
State and Local Governments	10% of total award amount
For-Profit Organizations	15% of total award amount
Nonprofit Organizations	15% of total award amount

In circumstances where the Secretary has determined it is necessary and appropriate, the dollar threshold for payment of indirect costs may be modified for Award(s) subject to these policies.

A Fact Sheet regarding the indirect percentage cap has also been attached. This Fact Sheet includes a summary of the policy flashes, frequently asked questions (FAQs), a calculation narrative as well as sample calculations.



If you have any questions concerning this notification, please contact the undersigned Project Officer by e-mail at jassmine.okiemen@hq.doe.gov.



Jasmine Okiemen
DOE Project Officer

Attachment (1)

EXHIBIT 4



Department of Energy

Indirect Percentage (%) Cap Against Total Award Fact Sheet

Contents

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Preamble

It is a common misconception that an indirect rate is equal to the percentage of the total award costs (e.g. a 50% rate does not mean 50% of the award). Therefore, it is important to understand a percentage cap on indirect cost recovery is not an indirect rate cap.

DOE Policy

The Department established a maximum allowable dollar amount (stated in terms of a percentage of the total project award amount) that it will reimburse for allowable, allocable, and reasonable indirect costs under the DOE Awards. The percentage that will be reimbursable is inclusive of total indirect costs and fringe benefit costs.

Recipients should continue to utilize their negotiated and approved indirect cost rate(s) in applications for financial assistance awards, but the Department established a maximum dollar amount that it will reimburse under the awards. The maximum limit of funds to be paid or reimbursed to a new award as indirect costs will be calculated as a percentage of the total project award amount and will be included in the award terms as a cap. [For for-profit organizations, this maximum percentage is fifteen percent \(15%\). For nonprofit organizations, this maximum percentage is 15 percent \(15%\). For state and local governments, this maximum percentage is 10 percent \(10%\).](#) Tribal entities and Institutions of Higher Education (IHEs)/Universities are currently not impacted.

All New Awards mandate that the Department limit the payment or reimbursement of all allowable, allocable, and reasonable indirect costs to the maximum percentages listed above. This policy will better balance the Department's twin aims of funding meaningful financial assistance programs to stimulate a public purpose, such as improved infrastructure or technology deployment, and upholding its fiduciary Federal Stewardship obligations to the American people.

In circumstances where the Secretary has determined it is necessary and appropriate, the dollar threshold for payment of indirect costs may be modified for Award(s) to for-profit organizations that are subject to this policy.

Frequently Asked Questions

Q: What is a percentage (%) cap against the Total Award?

A: The percentage (%) cap is a maximum percentage of indirect costs which can be recovered on each DOE award, which shall be expressed as a dollar amount in the Award Terms. The percentage is calculated against the Total Award Amount (Federal amount plus required cost share). See [narrative and examples calculations](#) below.

Q: Why was this percentage cap created?

A: Limiting the percentage of total indirect cost recovery ensures taxpayer funds are fully utilized to meet Department objectives while concurrently providing recipients with a fair and reasonable indirect cost recovery amount to only pay for essential items not directly supporting the federal award.

Q: What is the difference between a cap on an indirect rate and a cap on indirect cost percentage of the total award?

A: A cap on an indirect rate means the organization cannot bill more than a specified indirect billing *rate* against the allocable cost base. A cap on the indirect cost percentage (%) of the total award means the Recipient shall utilize an approved rate, but the resulting reimbursable *costs* for fringe and indirect costs cannot exceed the percentage cap (e.g. 10% or 15%) of the total award value. See calculation examples.

Q: Which organizations are impacted by indirect cost percentage caps?

A: All For-Profit, Nonprofit, and State and Local Government Recipients and Subrecipients are to follow the applicable percentage caps.

Q: Are there any organizations excluded from the indirect cost percentage caps?

A: Currently, Institutes of Higher Education (IHEs) and Tribal organizations are excluded from any listed percentage caps.

Q: What are the percentage caps?

A: For-profit and Nonprofit organizations are subject to a 15% cap based on the total award and State and Local Governments are subject to a 10% cap based on the total award.

Q: Why are State and Local Governments 10% and not 15%?

A: State and Local Governments generally incur lower indirect cost allocations due to shared infrastructure and centralized administrative systems. A trend analysis conducted using nearly a decade of data reflected State and Local entities incurred an average of 5% to 7% less in indirect cost recovery than other entity-types.

Q: Does this percentage cap impact my current award?

A: No. The percentage cap is prospective, not retroactive. If a new award is made on or after May 9, 2025, the percentage cap will apply. If a current award is fully conditioned (funds were obligated, however the award was not negotiated or executed to start), the percentage cap will apply if the award conditions are lifted on or after May 9, 2025.

Q: Must the full percentage cap be utilized?

A: No. If an organization is utilizing indirect rates (from a rate agreement, rate proposal, or de minimis election) and the resulting fringe and indirect costs are less than the full percentage cap, indirect costs should not be increased to meet the full cap.

Q: Are FFRDCs included in the Total Award Amount?

A: Yes. FFRDCs are included in the Total Award Amount.

Q: Are fringe costs part of the percentage cap?

A: Yes. The percentage cap includes fringe and indirect costs.

Q: Can our organization utilize indirect cost amounts over the cap as cost share?

A: No. The percentage cap is against the Total Award, which is Federal and Cost Share, and cannot be exceeded.

Q: How do unrecovered indirect costs as cost share get reimbursed with this cap?

A: Unrecovered costs are described under [2 CFR § 200.306\(c\)](#) as the difference between the amount charged to the Federal award and the amount which could have been charged. If the percentage of indirect costs, inclusive of fringe, are less than the cap, there is no impact to unrecovered indirect costs. However, any indirect costs above the cap are not amounts which 'could have been charged' to the DOE award; therefore, they are not unrecovered and not allowed as cost share.

Q: If the organization does not meet the cap amount, can the remainder be used as cost share?

A: No. Cost Share are allowable costs which are part of the total award and the cap amount is a limitation or maximum amount of costs which cannot be exceeded, not a fixed amount for recovery. Any difference cannot be utilized as cost share.

Q: Can our organization still use our approved rate agreement?

A: Yes. The organization can use approved rates and allocation methodology from their Cognizant Agency; however, if the dollar amount of indirect costs under the approved rates exceeds the cap amount, the amount more than the cap is not allowed, and rates may need to be adjusted downward.

Q: Does our organization still need to provide a rate proposal if it desires to charge indirect costs but does not have an agreement?

A: Yes. The organization will need to provide a rate proposal in support of segregated fringe and indirect billing rates for provisional billing purposes and can allocate approved provisional rates up to the percentage cap amount on the award.

Q: Does our organization still need to submit our annual Incurred Cost Proposal?

A: Yes. Indirect billing rates are still required to be trued-up (reconciled) annually to ensure there were no over-recoveries in indirect costs and the Incurred Cost Proposal still needs to be provided to the Cognizant Agency per the appendices of 2 CFR Part 200 and [FAR Part 42.7](#).

Q: Can our organization still elect the de minimis billing rate per [2 CFR Part 200.414\(f\)](#)?

A: Yes. The organization can elect the de minimis if it does not have a current rate agreement; however, the cap on fringe and indirect cost still applies.

Q: If the percentage cap amount is not met, is the entity entitled to receive the difference up to the cap?

A: No. The cap is a limitation or maximum amount set for cost recovery, not a fixed amount to be recovered. The entity is not entitled to the difference in the indirect costs incurred and the cap amount.

Q: How is our organization supposed to adjust the budget to meet the cap?

A: The organization will need to determine how to adjust their budget to ensure the cap is not exceeded. DOE cannot provide input or guide recipients how the costs proposed from a Recipient are to be implemented into the budget.

Q: If the recipient reduces their indirect costs recovery amounts to meet the cap, can award costs be reallocated to direct cost elements?

A: If there are legitimate direct costs required to meet the project objectives of the DOE award, justification can be provided for DOE approval for any additional direct costs.

Q: If only the first budget period is being negotiated, is the percentage cap per budget period or always based on the Total Award amounts?

A: The percentage cap is calculated against the total award amount (Federal and Cost Share). If only the first budget period is negotiated, then the total award amount is tied to the first budget period. In the second budget period, the total award amount is tied to budget periods one and two, and so forth.

Q: What happens if the Total Award costs are adjusted?

A: The percentage cap is calculated against the total award (Federal and Cost Share). If the total award cost changes, then the cap amount also adjusts up or down to coincide with the total award amount.

Q: Can the organization bill the costs associated with the cap in advance of incurring them?

A: No. Indirect costs are allocated only if direct costs are incurred. It is unallowable to invoice for any costs which have not been incurred.

Q: If a recipient's labor billing rates include overhead burdens, does the cap apply?

A: Yes. If the recipient labor rates are burdened, the DOE will require the burdened labor rates be broken out into the direct hourly rate and reflect the percentage burden to ensure the percentage cap is not exceeded.

Q: Are there circumstances in which the entity can request the percentage cap limitation be increased?

A: There may be unusual circumstances which the DOE will review on a case-by-case basis depending on the scope of effort. Any deviations from the percentage cap limitation will require Energy Secretary approval through a request to the Grants Officer and the Head of Contracting Activity (HCA).

Calculation Narrative and Examples

The attached Narrative and Excel® Worksheets contain instructions and examples of how the percentage of indirect costs are calculated against the total award costs.



Indirect Cap
Narrative Guidance.pc



Sample Calculations
for Percentage CAPs.x

Definitions and Acronyms

Reference	Acronym	Description
Burdened Rate	None	A burdened rate refers to the total cost of employing a worker per hour, including not just their direct wage but also all associated labor costs like taxes, benefits, insurance, training, and other indirect expenses.
Code of Federal Regulations	CFR	The CFR is the codification of the general regulations publicized by the executive departments and agencies of the Federal Government.
Cognizant Federal Agency	CFA	Federal Agency which provides the greatest amount of Federal funds to an organization.
Direct Cost	None	Costs that can be identified specifically to a particular final cost objective, such as the Federal award.
Federal Acquisition Regulation	FAR	For Financial Assistance, for-profit organizations are governed by the FAR Cost Principles under FAR Part 31.2 and applicable audit rules under Part 42.7.
Head of Contracting Activity	HCA	Senior official responsible for managing contracting functions within the Agency.
Indirect Costs	IDCs	Costs for a common or joint purpose benefitting more than one cost objective, such as the Federal award or other funded activity.
Indirect Rate Proposal	IRP	Supporting documentation, which is reviewed by the Cognizant Federal Agency, to approve and establish an organization's indirect rates for estimation and billing purposes on each Federal award.
Negotiated Indirect Cost Rate Agreement (Rate Agreement)	NICRA	Official, CFA approved agreement for indirect cost rates which apply to all Federal awards.
Recipient	None	The organization named as the awardee that signs the Financial Assistance agreement and receives Federal funds under the financial assistance award.
Subrecipient	None	An entity that receives a subaward from a pass-through entity (Recipient or Subrecipient) to contribute to the goals and objectives of the project.

EXHIBIT 5



Department of Energy

Indirect Percentage Cap on DOE Award Budgets Narrative Calculation Guidance

When the total grant award is not known until the budget is developed, implementing and calculating an indirect cost percentage cap against the total award costs requires a flexible approach during budget planning. Since the final award amount depends on the proposed budget (which includes both direct and indirect costs), you'll need to use an iterative process to ensure the indirect costs stay within the funder's cap (e.g., "indirect costs cannot exceed X% of the total award"). Below is a step-by-step guide to handle this scenario.

Key Considerations

- **Total Award:** The sum of direct costs (project-specific expenses) and indirect costs, determined by the budget the recipient proposes, and the DOE approves. To include Federal and cost share.
- **Challenge:** Since the total award isn't fixed upfront, the organization must estimate direct costs, calculate indirect costs within the cap, and ensure the total aligns with project needs and NOFO expectations.
- **Goal:** Develop a budget where indirect costs do not exceed the specified percentage of the total award while covering necessary expenses within the cap limitations.

Steps to Implement and Calculate

1. Understanding the Indirect Cost Policy

- Confirm the applicable indirect cost cap percentage (e.g., 15% of the total award) in the NOFO.
- The cap applies to the entire Federal award inclusive of cost share (direct + indirect costs) with no exclusions.
- The DOE requires a negotiated indirect cost rate agreement (NICRA), an indirect rate proposal, or will allow for the election of the de minimis rate under 2 CFR 200.414(f).

2. Estimate Direct Costs

- Identify all project-specific expenses (direct costs) needed to achieve the grant's objectives. These may include the following: Salaries and wages, supplies, equipment, travel, subrecipient costs, subcontracts, or other project-related costs (ODC).
- Create a preliminary direct cost estimate based on the project's scope. For example, suppose you estimate direct costs at **\$80,000**.



3. Set Up the Indirect Cost Cap Formula

- Since the total award is still unknown, express the relationship between direct costs, indirect costs, and the total award mathematically.
- Definitions:
 - Let (D) = Direct Costs
 - Let (I) = Indirect Costs
 - Let (T) = Total Award = D + I
 - Let (C) = Indirect cost cap percentage (e.g. 0.15 for 15%)
 - Solving for the Maximum Indirect cost cap: I

$$I \leq \frac{C * D}{1 - C}$$

- This formula gives the maximum allowable indirect costs based on direct costs and the cap percentage.

4. Calculate Indirect Costs Iteratively

- Use the formula to calculate the maximum indirect costs for your estimated direct costs.
- Example:
 - Estimated direct costs ((D)): \$800,000
 - Indirect cost cap ((C)): 15% = 0.15
 - Maximum indirect costs ((I)): \leq

$$\frac{0.15 * 800,000}{1 - 0.15} = \frac{120,000}{0.85} = \mathbf{141,176.47}$$

- Total award ((T)) = $D + I = \$800,000 + \$141,176.47 = \$941,176.47$
- Verify the cap:
 - Indirect costs = \$141,176.47
 - 15% of total award = $0.15 \times \$941,176.47 \approx \$141,176.47$ (satisfies the cap).



5. Applying Organization's Indirect Cost Rates

- If your organization has a negotiated indirect cost rate of 30% fringe rate against labor and indirect rate to 25% of total direct costs, calculate the indirect costs using the rates and compare them to the cap:
 - Example: For \$200,000 in Labor and \$600,000 in other direct cost categories with a 30% fringe rate and a 25% indirect rate results in

Fringe calculation: $200,000 * 0.30 = \mathbf{60,000}$.

Indirect Cost Base (Direct Costs + Fringe): $800,000 + 60,000 = 860,000$

Indirect Cost Calculation: $860,000 * 0.25 = \mathbf{215,000}$

Total Indirect Costs + Fringe: $60,000 + 215,000 = \mathbf{275,000}$

- Since \$275,000 exceeds the cap (\$141,176.47), the organization must adjust the indirect cost rates to meet the capped amount (\$141,176.47) to stay compliant.

6. Adjusting Organization's Indirect Cost Rates as Needed

- First adjust fringe to 20% fringe rate against labor

Fringe calculation: $200,000 * 0.20 = \mathbf{40,000}$.

- Second, determine the indirect rate for the remaining balance for indirect costs allocation. An indirect rate of XX% of total direct costs, calculate the indirect costs using the rate and compare to the cap:

Maximum Indirect Costs ((I)) less Fringe: $141,176.47 - 40,000 = 101,176.47$

Indirect Cost Base (Direct Costs + Fringe): $800,000 + 40,000 = 840,000$

Solve for ((XX%)): $\frac{101,176.47}{17,200} = \mathbf{12.0448\%}$

- Verify the Cap:

Indirect Rate ((I)) * Indirect Cost Base: $12.0448\% * 840,000 = 101,176.32$

Total Indirect Costs (Fringe + Indirect): $40,000 + 101,176.32 = \mathbf{\$141,176.32}$

- The Indirect costs are \$0.15 cents below the cap amount (cap satisfied).



7. Adjusting the Budget as Needed

- If the estimated direct costs (\$800,000) are insufficient to meet project needs with the capped indirect costs (\$141,176.47), adjust:
 - Increase direct costs for legitimate project needs (e.g., to \$850,000) and recalculate the Maximum indirect costs ((I)):

$$\frac{0.15 * 800,000}{1 - 0.15} = \frac{127,500}{0.85} = \mathbf{150,000} \leq$$

Total award = \$850,000 + \$150,000 = \$1,000,000.

- Verify: 15% of \$1,000,000 = \$150,000 (cap satisfied).
- Iterate until the budget balances project needs, funder requirements, and the indirect cost cap.
- Ensure all costs (direct and indirect) are allowable, allocable, and reasonable per the DOE's guidelines.

7. Finalize the Budget Proposal

- Document the budget, showing:
 - Direct costs (e.g., \$850,000, itemized by category like salaries, equipment).
 - Indirect costs (e.g., \$150,000, capped at 15% of the total award).
 - Total award (e.g., \$1,000,000).
- If applicable, reference the NICRA, Rate Proposal, or de minimis rate, noting that the cap takes precedence if it's lower.

8. Submit and Monitor

- Submit the proposed budget with the grant application, ensuring the total award reflects the sum of direct and indirect costs within the cap.
- After award approval, track actual direct and indirect costs in your accounting system to ensure compliance with the cap.
- When drawing down funds (e.g., via a system like ASAP for federal grants), request indirect costs up to the capped amount.
- Retain documentation (e.g., budget calculations, NICRA, rate proposal) for audits.



Implementation Tips

- **Use a Spreadsheet:** Create a spreadsheet to iterate direct costs, calculate indirect costs, and verify the cap.
- **Engage Finance Team:** Collaborate with your organization's finance staff to align the budget with accounting practices and indirect cost policies.
- **Test Scenarios:** Develop multiple budget scenarios (e.g., low, medium, high direct costs) to find the optimal balance.
- **Document Assumptions:** Note your direct cost estimates and cap calculations in the budget narrative for transparency.

Common Pitfalls

- Underestimating direct costs, leading to an insufficient total award.
- Misapplying the cap (e.g., calculating 15% of direct costs instead of the total award).
- Ignoring your organization's indirect cost rate, which may require budget adjustments if it exceeds the cap.
- Failing to iterate when the initial budget doesn't meet project needs.

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

State of New York, et al.

(b) County of Residence of First Listed Plaintiff Albany, NY
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Brian Simmonds Marshall, Oregon Dep't of Justice, 100
SW Market Street, Portland, OR 97201, (971) 673-1880

DEFENDANTS

United States Dep't of Energy; Chris Wright, in his official capacity as Secretary of the U.S. Dep't of Energy

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 INTELLECTUAL PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input checked="" type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
5 U.S.C. sec. 706(2)(A)

Brief description of cause:

Agency action contrary to law, and agency action that is arbitrary and capricious

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE

Aug. 15, 2025

SIGNATURE OF ATTORNEY OF RECORD

s/ Brian Simmonds Marshall

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. _____

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* _____
 was received by me on *(date)* _____ .

☐ I personally served the summons on the individual at *(place)* _____
 _____ on *(date)* _____ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____ , a person of suitable age and discretion who resides there,
 on *(date)* _____ , and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____ , who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____ ; or

☐ I returned the summons unexecuted because _____ ; or

☐ Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. _____

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 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
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Server's address

Additional information regarding attempted service, etc: