

## NIH Policy Update

On February 7, 2025, the National Institutes of Health (NIH) released a policy update that would significantly reduce the amount of funding that research institutions and universities can receive under their current and future grants with NIH. The updated policy, [Notice Number NOT-OD-25-068](#), Supplemental Guidance to the 2024 NIH Grants Policy Statement: Indirect Cost Rates, would deviate from negotiated indirect cost rates that these institutions and universities establish annually under longstanding applicable regulations, instead imposing a 15% cap on indirect cost rates regardless of whether the government previously agreed to higher rates. In 2024, NIH supported research amounted to more than \$90 billion in economic activity and over 400,000 jobs, and this new rate cap would significantly adversely affect medical research.

The NIH planned on imposing the 15% cap on February 10, but a consortium of plaintiffs led by 22 state attorney generals sued. On February 10, the U.S. District Court in Boston placed the updated policy on hold by issuing a temporary restraining order. See *Commonw. of Mass. et al. v. NIH et al.*, No. 1:25-cv-10338 (D. Mass.). On March 5, that same court issued a preliminary injunction preventing implementation of the policy while litigation ensues. The government has 60 days to appeal, and further hearings are pending.

The proposed 15% cap on indirect costs (commonly referred to as Facilities and Administration or F&A costs) will place widespread and severe strains on research institutions – many of which have historically negotiated indirect/F&A rates above 50%, and some as high as 70%. For example, a university with \$100 million in grants with a 55% F&A rate would lose \$40 million annually under the new cap. While larger private institutions with large endowments may be able to withstand these cuts, smaller or state universities are particularly vulnerable. The result will likely be that smaller institutions will be disproportionately affected, potentially resulting in consolidation of research at the larger, private institutions.

Kutak Rock is well positioned to help these institutions cope with the proposed caps in indirect F&A costs. First, for those with existing grants and negotiated indirect cost rates, there are several legal and practical arguments to advance that could protect those grants from the proposed cuts. Our team of public contracting lawyers have years of experience navigating the complicated world of cost reimbursements on government programs. We can help your institution assemble a strategy tailored to the particular circumstances for each grantee.

Second, for grantees pursuing new grants who may likely be subject to lower indirect cost/F&A rates, there are a number of legal, accounting, and practical steps to take to help drive down those rates and move the costs either to direct costs or other methods of cost allocation and cost reduction to arrive at a manageable position going forward.

### If you have further questions or follow-up, please contact:

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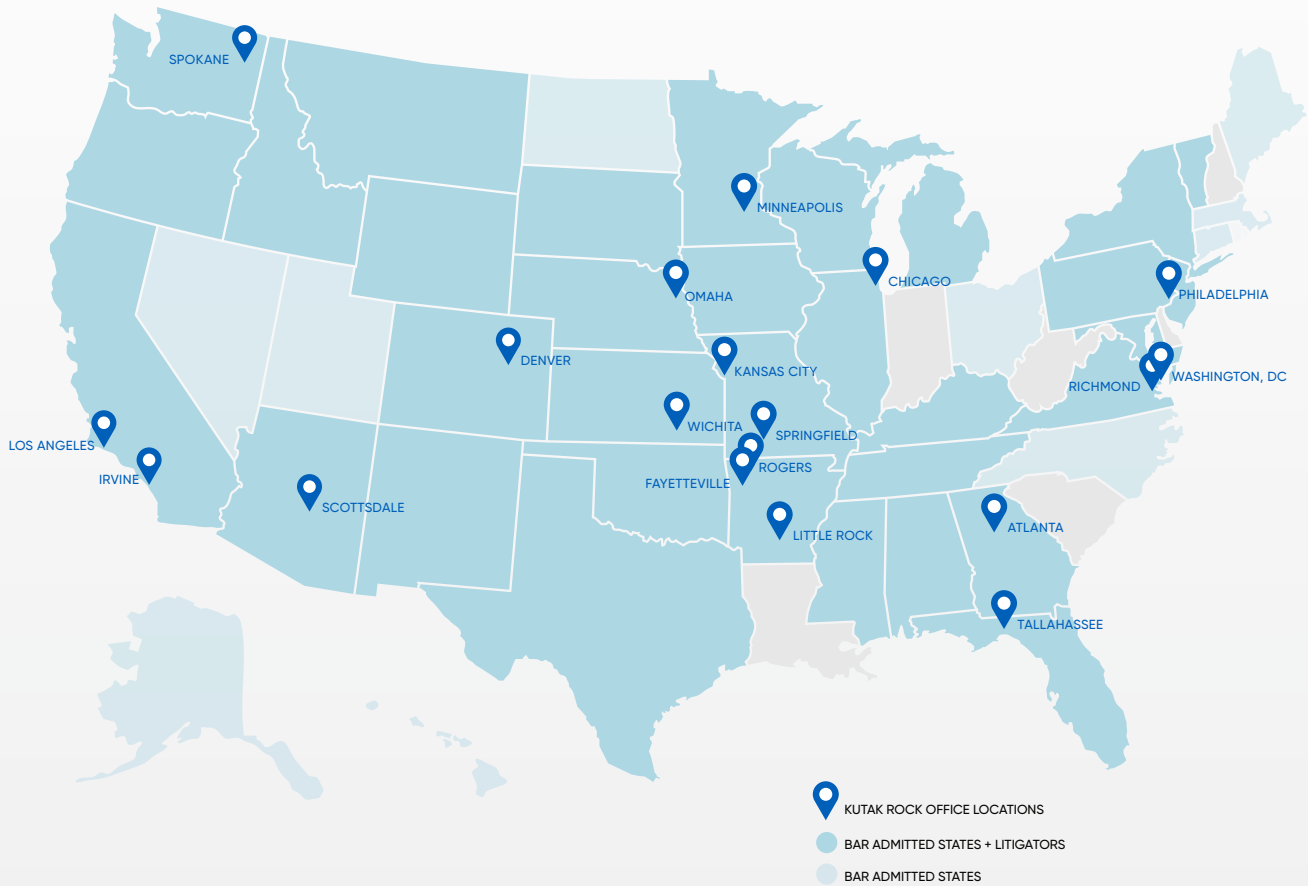
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Kutak Rock opened its doors in 1965 with a stated commitment to a collegial and equitable work environment for *all* its employees. That early commitment manifested as informal programming and collaborative teams across offices and practice areas with tangible results for 60 years. These efforts are supported by a dedicated Inclusive Engagement Department that, among other things, ensures firm members have access to a comprehensive, data-driven Well-Being Initiative; a robust Career Support program for attorneys and staff at all levels; an active and fully supported pro bono and community service program; and book clubs, dialogue groups and other strategic initiatives.

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### Public and Alternative Finance

More than 130 Kutak Rock lawyers devote all or a major portion of their practice to the field of public finance and related aspects of law. The firm has served as bond counsel in more than 20,000 municipal bond issues in all 50 states, the District of Columbia, the Virgin Islands, Guam, and Puerto Rico. Kutak Rock attorneys also take pride in their willingness to work with our clients to develop new and inventive approaches to satisfy the needs of our clients. Rather than only being able to replicate what other firms have done before, the firm has gained a reputation for undertaking sophisticated transactions that involve the application of creative approaches to difficult financing problems.

The firm's national prominence is attributable in part to the large number of subspecialties it maintains within the public finance field. These subspecialties run the gamut of tax-backed and revenue bond debt, including traditional general obligation bond issues, tax and revenue anticipation notes, municipal commercial paper, infrastructure financings (including water, sewer and electric bonds), higher education, healthcare and other 501(c)(3) conduit financings, special district and tax increment bonds, transportation financings (including airport, mass transit, port and toll road bonds), lease financings (including certificates of participation), tax abatements, tax credits, single-family and multifamily housing bonds, and a wide variety of municipal derivative products.

The National Public Finance Department is purposefully organized to match this breadth of experience with the needs of a diverse client base. Consequently, the firm does not limit its practice focus to one particular role. The firm routinely serves as lender's counsel, bond counsel, special tax counsel, issuer's counsel, disclosure counsel, underwriter's counsel, placement agent's counsel, trustee's counsel, counsel to municipal bond insurance companies and to letter of credit and liquidity providers, and borrower's counsel in conduit financings.

### Higher Education Practice

Our attorneys are trusted outside counsel that understand the unique issues and dynamics presented by the college and university environment. We have served as counsel in transactions that have financed the construction and equipping of academic and administrative buildings, laboratories, research centers, teaching hospitals, computing centers, student unions, student housing projects, stadiums, arenas, and campus energy utility systems.

We serve as trusted outside counsel to higher education institutions on a wide variety of issues, including liability, curriculum standards, testing procedures, school finance, student financial aid, constitutional rights, and school safety. Our representation draws on the specialization and experience of attorneys across several practice groups. We can provide turnkey service in day-to-day and discrete matters for higher education institutions, including:

- Academic affairs
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- Campus security
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- Public finance
- Public-private partnerships (P3)
- Public safety
- Purchasing
- Real Estate
- Residency
- Sponsored research
- Student affairs
- Student housing
- Subpoenas
- Tax
- Title IX



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With more than 35 years of experience, Steve has a deep understanding of his clients' needs and the ability to head off roadblocks before they appear. He has a long, proven track record of successfully counseling both public- and private-sector clients on the procurement process from inception to close including contract formation, administration, claims, appeals, audit resolution and overall project management. Steve received his B.A. from Yale University and his J.D. from George Washington University School of Law.



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David's professional experience involves a wide variety of litigation, administrative, and corporate counseling issues related to federal procurement laws. His experience includes complex litigation in federal court under the qui tam provisions of the False Claims Act, claims disputes before the Boards of Contract Appeals, and bid protest actions at the U.S. Court of Federal Claims and Government Accountability Office. David received his B.A., *cum laude*, from the University of Utah and his J.D., *magna cum laude*, from Washington College of Law The American University.



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With over two decades of experience in real estate and corporate law, Aaron brings a deep understanding of complex transactions. Aaron has served as in-house counsel for several real estate investment firms. Throughout his career, he has represented clients in real estate transactions and general business matters and values the opportunity to better understand his clients' businesses as a means to address their respective legal needs. Aaron received his B.A. from the University of Kansas and his J.D. from University of Missouri-Kansas City School of Law.



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Seth is the lead attorney for billions of dollars of P3, energy and real estate structured finance and development projects. He advises governments, developers, financiers, investors, and rating agencies in structuring, developing, operating and leasing private and governmental projects. He regularly structures, negotiates, documents, and closes large, complex transactions for lenders, developers, federal, state, and local government entities. Seth received his B.A. in finance from the University of Florida and his J.D. from American University, Washington College of Law.



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George serves as Chair of the firm's Federal Practice and National Security Law Group. He represents state and local governments, federal departments and agencies, educational institutions, lenders, and private entities in connection with public-private transactions, the redevelopment of closed military installations, government and commercial real property transactions, enhanced use leases, property exchanges, government contracts, and the financing of government and commercial facilities and development projects. George works on all phases of complex government to government and government to private sector development projects and regularly structures, negotiates, documents, and closes these transactions. He serves concurrently as General Counsel to the Association of Defense Communities ("ADC"), the premier national organization representing state and local governments and communities with active, closed, and closing military bases. George received his B.A. from the State University of New York at Stony Brook and his J.D. from New England School of Law.



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Thomas represents corporate and individual clients in complex litigation and bid protests against private and governmental adversaries, with an emphasis on representing health care providers, government contractors, insurance companies, managed care companies, financial institutions, information technology companies, corporate executives, and licensed professionals. Thomas received his B.A. with Honors from Marquette University and his J.D. from Catholic University of America School of Law, Notes and Comments Editor, Catholic University Law Review.