

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

ASSOCIATION OF AMERICAN UNIVERSITIES,
et al.,

Plaintiffs,

v.

DEPARTMENT OF DEFENSE, et al.,

Defendants.

Case No. 1:25-CV-11740

MOTION FOR SUMMARY JUDGMENT

This suit challenges an unlawful action by the U.S. Department of Defense (“DOD”) that, as this Court has already found in granting preliminary relief, was taken “without acknowledgement of its apparent illegality and without any attempt to structure the policy in a manner that fulfills the established requirements of the law.” *Ass’n of Am. Univs. v. Dep’t of Defense* (“DOD”), No. 25-cv-11740, 2025 WL 2022628, at *1 (D. Mass. July 18, 2025).

In a memorandum from Secretary Hegseth on May 14, 2025, Dkt. 1-1 (the “Hegseth Memo”), and “guidance” issued on June 12, 2025, by Under Secretary of Defense Emil Michael, Dkt. 1-2 (the “Michael Memo”), DOD announced a new policy that implements a 15% cap on “indirect costs” for all grant awards to institutions of higher education—affecting both new and existing grants. The Hegseth and Michael Memos (collectively, the “Rate Cap Policy” or “the Policy”) are clearly unlawful, just like the materially identical policies issued in recent months by the National Institutes of Health, Department of Energy, and National Science Foundation—all

three of which have now been permanently vacated by courts in this District.¹

This Court has already preliminarily enjoined the immediately effective portions of the Policy, *i.e.*, those portions implementing a 15% indirect cost rate cap for all awards issued on or after June 12, 2025. *DOD*, 2025 WL 2022628, at *29. Plaintiffs now respectfully move the Court, pursuant to Federal Rule of Civil Procedure 56, to enter summary judgment in favor of Plaintiffs and enter an order declaring the Rate Cap Policy invalid, arbitrary and capricious, and contrary to law; and vacating the Policy in its entirety under 5 U.S.C. § 706. Plaintiffs further request that the Court require that, within 24 hours of entry of a final order, Defendants provide written notice of the Order to all funding recipients affected by the Rate Cap Policy and that, within 48 hours of the Order, they notify the Court that they have done so. *See* Order Granting Plaintiffs' Motion for a Temporary Restraining Order at 1, *DOD*, No. 25-CV-11740 (D. Mass. June 17, 2025), Dkt. 48 (ordering same at TRO stage); *NSF*, 2025 WL 1725857, at *24 (ordering same at final judgment).

As set forth in the accompanying memorandum, Plaintiffs have established that the Policy is unlawful on multiple grounds, including that it is contrary to regulation, arbitrary and capricious in its entirety, exceeds DOD's statutory authority, and impermissibly retroactive.

¹ *Massachusetts v. NIH*, 2025 WL 1063760, at *2 (D. Mass. Apr. 4, 2025), *appeal docketed*, No. 25-1344 (1st Cir. Apr. 09, 2025); Final Judgment at 2, *Ass'n of Am. Univs. v. DOE*, No. 25-cv-10912 (D. Mass. June 30, 2025), Dkt. No. 71; *Ass'n of Am. Univs. v. NSF* ("NSF"), No. 25-cv-11231, 2025 WL 1725857, at *21 (D. Mass. June 20, 2025).

Dated: July 28, 2025

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Local Rule 7.1(a), counsel for Plaintiffs certify that they conferred with counsel for Defendants regarding this Motion and Defendants plan to file an opposition as set out in the joint briefing schedule entered by the Court on July 15, 2025.

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CERTIFICATE OF SERVICE

Counsel for Plaintiffs certify that they have submitted the foregoing document with the clerk of court for the District of Massachusetts, using the electronic case filing system of the Court. Counsel for Plaintiffs hereby certify that they have served all parties electronically or by another manner authorized by Fed. R. Civ. P. 5(b)(2).

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