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For 2018, Indirect Cost Rate Appears Safe, But Budget Battle May Reignite

By Theresa Defino

NIH is not to tinker with the indirect cost rate structure, regardless of what the Trump administration thinks—at least not if key Congressional appropriations committees have their way. For universities and other federal awardees, this comes as a relief, as the White House and budget officials wanted NIH to adopt a flat 10% rate. But the battle may not be over.

HHS appropriations bills for fiscal year (FY) 2018, which began Oct. 1, haven't yet been adopted by the full House and Senate, so they're not yet law. Like the rest of the federal government, HHS, which includes NIH, is operating under a continuing resolution (CR) that provides time-limited funding at FY 2017 levels, generally.

But Congress typically aims to pass full appropriations, or omnibus bills, as they are also called, that last for a full year or at least more than a few weeks or months.

On Dec. 14, NIH officials provided a FY 2018 update to the Advisory Committee to the Director (ACD), NIH Director Francis Collins' highest ranking consultative panel. In some respects, facts presented were mostly positive pertaining to appropriations approved thus far, especially when compared to the budget that Trump requested. (For other stories from this meeting, see pages 1 and 4).

But for Collins, the jubilation has to be controlled, as no one knows what the future holds.

Demands for Cuts Rejected

As of Dec. 19, appropriations committees in both the House and Senate had passed somewhat separate appropriations bills for HHS, with varying funding amounts for NIH among the differences. But they share similar language that is crystal clear on the indirect cost, also called facilities and administrative (F&A), rate methodology currently in use: let it be.

In fact, the sentiment, at least from the Senate, might realistically be characterized more as “don't you dare touch it.”

The Trump administration made its desire to cut federal spending known immediately, and it set its sights on NIH, long a bipartisan congressional darling. When the administration's budget came out in February 2017 for FY 2018, it called for an 18% reduction in NIH spending and imposition of a 10% across-the-board F&A rate.

But the belt-tightening wasn't going to wait for a new budget. Agencies were also instructed by Mick Mulvaney, director of the Office of Management and Budget, to propose cuts in their current budgets to equal levels proposed for 2018—essentially, to underspend the funds they already had (RRC 5/17, p. 1). The proposed budget also called for shuttering or significantly downsizing several NIH programs and sub-agencies.

According to the Senate Appropriations Committee, the Trump administration requested \$7.436 billion less than 2017 appropriations of \$33.259 billion. On Sept. 7, the committee voted to give NIH a total boost of \$2 billion, or a

total of \$36.084 billion, with spending included for special programs. House committee members were less generous: on July 24, they voted for an increase of \$1.1 billion. Importantly, both bills prohibit a change in the F&A structure.

The text of the Senate bill is forceful, stating that members outright “reject” the proposed change.

“Even in a difficult funding environment, the Committee believes it is critical to prioritize funding for NIH and build on the last 2 years of funding increases in a predictable and consistent way. Without continued investment in the NIH, we jeopardize our current scientific progress, risk losing a generation of scientists, and stunt our Nation’s global competitiveness.

“The Committee rejects the Administration’s proposal to cap Facilities & Administrative [F&A] costs for NIH grantees at 10 percent. While the Committee understands the desire to identify budget and administrative savings, F&A costs are not optional; they are a fundamental part of doing research. The Committee also disagrees with the proposal to eliminate the John E. Fogarty International Center and provides funding to maintain the Center at NIH.”

Significant bills, such as appropriations, often have an accompanying report by the sponsoring committee, which elucidates and elaborates on Congress’s wishes, and sometimes provides instruction and requirements that are not in the legislative text.

The Senate report identifies various items that go into F&A expenditures and the negative consequences that occur under the administration’s plan.

“Central to the Administration’s proposal to reduce Federal investments in biomedical research is its proposal to cap the [F&A] costs of grants, so-called ‘indirect costs,’ at 10 percent. The F&A cost of a grant is intended to cover the indirect costs of biomedical research, ranging from administration and facilities to the cost of equipment shared across multiple researchers. For example, at research facilities focused on making the next breakthrough in cancer treatment, indirect costs supply the air handlers that provide the precise conditions needed to generate therapeutic T cells for immunotherapy trials, complex data systems to analyze and protect patients’ genomic data, and support for the next generation of scientific leaders. The methodology for negotiating indirect costs has been in place since 1965, and rates have remained largely stable across NIH grantees for decades. The Administration’s proposal would radically change the nature of the Federal Government’s relationship with the research community, abandoning the Government’s long-established responsibility for underwriting much of the Nation’s research infrastructure, and jeopardizing biomedical research nationwide. The Committee has not seen any details of the proposal that might explain how it could be accomplished without throwing research programs across the country into disarray. To avoid this possibility, the Committee has included bill language to prohibit HHS from developing or implementing a modified approach to funding F&A costs.”

The language in Sec 228 in the text of the House appropriations bill states: “In making Federal financial assistance, the NIH shall continue to apply the provisions relating to indirect costs in part 75 of title 45, Code of Federal Regulations, including with respect to the approval of deviations from negotiated rates, to the same extent and in the same manner as the NIH applied such provisions in the third quarter of fiscal year 2017. None of the funds appropriated by this Act may be used by the NIH to develop or implement a modified approach to such provisions, or to intentionally or substantially expand the fiscal effect of the approval of such deviations from negotiated rates beyond the proportional effect of such approvals in such quarter.”

No such prohibition exists today, and by requiring NIH to stick to whatever it was doing in the third quarter of last year—rather than the fourth—the committee seems to be heading off any potential changes that could have come into practice at the end of the year.

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