

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

COMMONWEALTH OF
MASSACHUSETTS, *et al.*,

Plaintiffs,

v.

NATIONAL INSTITUTES OF
HEALTH, *et al.*,

Defendants.

Civil Action No. 25-CV-10338-AK

DEFENDANT’S STATUS REPORT

On February 10, 2025, this Court entered an *ex parte* temporary restraining order (TRO, Doc No. 25) in the above captioned matter. The TRO provides (among other things):

- Defendants and their officers, employees, servants, agents, appointees, and successors are hereby enjoined from taking any steps to implement, apply, or enforce the Rate Change Notice (NOT-OD-25- 068) within Plaintiff States until further order is issued by this Court.
- Counsel for Defendants shall file a status report with the Court within 24 hours of the entry of this Order, and at biweekly intervals thereafter, confirming the regular disbursement and obligation of federal financial assistance funds and reporting all steps that NIH, HHS and their officers, employees, servants, agents, appointees, and successors have taken to comply with the Court’s temporary restraining order.

In accordance with the TRO, Defendants respectfully submit this status report, along with the attached Declaration of Dr. Michael S. Lauer.

The Department of Justice received notice of the TRO yesterday evening and forwarded the TRO to Acting General Counsel for the Department of Health and Human

Services (HHS), along with agency contacts at HHS Office of General Counsel and the National Institutes of Health (NIH). As indicated in Dr. Lauer's attached declaration, Defendants have not yet implemented, applied, or enforced the Rate Change Notice. Dr. Lauer's declaration explains that Defendants will not implement or enforce the Rate Change Notice in the Plaintiff States pending further order of this Court. Dr. Lauer also confirms that confirms that NIH has instructed all HHS components responsible for disbursement, including the Program Support Center, which manages the disbursement of NIH grant award funding, not to implement Rate Change Notice within the Plaintiff States. As a result, the regular disbursement and obligation of federal financial assistance funds will continue in the Plaintiff States as required under the TRO, again pending further order of this Court.

Respectfully submitted,

BRETT A. SHUMATE
Acting Assistant Attorney General

LEAH B. FOLEY
United States Attorney

BRIAN C. LEA
Deputy Associate Attorney General

Dated: February 11, 2025

/s/ Marc S. Sacks
BRIAN C. LEA
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Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF).

Dated: February 11, 2025

/s/ Marc S. Sacks
Marc S. Sacks

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

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Plaintiffs,)	CIVIL ACTION NO. 25-CV-10338-AK
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NATIONAL INSTITUTES OF HEALTH)	
et al.)	
)	
Defendants,.)	
)	

DECLARATION OF MICHAEL LAUER

I, Michael S. Lauer, hereby declare as follows:

1. I am the Deputy Director of the Division of Extramural Research at the National Institutes of Health (NIH), an operating division of the United States Department of Health and Human Services (DHHS). I have held this position since 2015. In this position, I am responsible for overseeing the NIH's grants program and ensuring that NIH grant awards comply with applicable laws, regulations, and policies.
2. On February 10, 2025, I was informed that the United States District Court for the District of Massachusetts had issued a Temporary Restraining Order enjoining the NIH

from implementing, applying, or enforcing the Rate Change Notice contained in NIH Grants Notice NOT-OD-25- 068 within Plaintiff States until further order is issued by this Court. The referenced Guide Notice establishes an indirect cost rate of 15% on all institutions of higher learning that receive NIH grant funding.

3. I confirm that NIH has not implemented or enforced the indirect cost rate described in the Guide Notice and that the agency will not do so with respect to grantees in the Plaintiff states pending further instructions from the court. I also confirm, as far as the steps the agency has taken, that NIH has instructed all components responsible for disbursement not to implement the rate change within the Plaintiff States.
4. I am aware that Notice of the Court's Order has been provided to the Program Support Center, the component of DHHS that manages the disbursement of NIH grant award funding.

I HEREBY DECLARE TO THE BEST OF MY KNOWLEDGE AND BELIEF,
UNDER PENALTY OF PERJURY under the laws of the United States of America,
that the foregoing is true and correct.

EXECUTED this _11th_ day of February 2025 at __4:49 PM_____.

Michael S.
Lauer -S

Digitally signed by Michael
S. Lauer -S
Date: 2025.02.11 16:50:17
-05'00'

Michael S. Lauer, M.D.