

As Trump Hits Pause on Certain Federal Financial Assistance Programs, Including for Grants and Loans, What Are Recipients' Rights and Remedies?

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On January 27, 2025, the White House published Memorandum M-25-13, titled “Temporary Pause of Agency Grant, Loan, and Other Financial Assistance Programs.” In an unprecedented move, the initial Memo appeared to suspend all funding for all federal grants, cooperative agreements, noncash contributions or donations of property, direct appropriations, food commodities, other financial assistance, loans, loan guarantees, interest subsidies, and insurance that may be implicated by his executive orders. Amidst a national outcry in response to the memorandum, OMB released a subsequent Memorandum on January 28, 2025, in which OMB appeared to walk back the broad freeze on most federal financial assistance. We summarize here the details of the Memos well as the rights and remedies of recipients that may be affected by this action.

The January 27 Memo requires each federal agency “to perform a ‘comprehensive analysis’ to ensure its grant and loan programs are consistent with President Donald Trump’s executive orders, which aimed to ban federal diversity, equity and inclusion initiatives, and limit clean energy spending, among other measures.” The review must “identify programs, projects, and activities that may be implicated by any of the President’s executive orders.” Each agency must then submit a list of affected programs to the OMB by February 10, 2025, which will conduct its own review of all federal funding-assistance programs and apparently make the determination of whether each will be terminated.

While OMB’s review is ongoing—which will be for an undefined period—the Memo requires that “Federal agencies must **temporarily pause all activities related to obligation or disbursement of all Federal financial assistance, and other relevant agency activities that may be implicated by the executive orders**, including, but not limited to, financial assistance for foreign aid, nongovernmental organizations, DEI, woke gender ideology, and the green new deal.” The funding pause will become effective at 5:00 p.m. ET on January 28, 2025.

In addition to existing grant and loan awards, the Memo suspends “all activities associated with open NOFOs, such as conducting merit review panels” and “issuance of new awards.” These activities will also be suspended “until OMB has reviewed and provided guidance to your agency with respect to the information submitted.” In the subsequent, January 28 Memo, the White House clarified this only affects federal financial assistance programs that are implicated by the following Executive Orders:

- Protecting the American People Against Invasion
- Reevaluating and Realigning United States Foreign Aid

- Putting America First in International Environmental Agreements
- Unleashing American Energy
- Ending Radical and Wasteful Government DEI Programs and Preferencing
- Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government
- Enforcing the Hyde Amendment

The second Memo states expressly that “the pause does not apply across-the-board. It is expressly limited to programs, projects, and activities implicated by the President’s Executive Orders, such as ending DEI, the green new deal, and funding nongovernmental organizations that undermine the national interest.” In addition to the carve out for financial assistance to individuals, the second Memo also makes clear the following programs should not be paused: mandatory programs like Medicaid and SNAP, funds for small businesses, farmers, Pell grants, Head Start, rental assistance, and other similar programs. Disaster relief under FEMA is notably not included in this list. Although neither Memo puts a deadline on OMB or the agencies to issue a determination on the availability of funding, the January 28 Memo asserts that “A pause could be as short as [a] day.”

While the second Memo offers some clarity and security to certain grant recipients, it does not ensure the safety of programs for the majority of grant and loan recipients. For example, the January 28 Memo does not alleviate concerns held by recipients of billions of dollars for programs funded through the Inflation Reduction Act, Infrastructure Investment and Jobs Act (commonly referred to as the Bipartisan Infrastructure Law), or potentially the CHIPS and Science Act – implementing projects that may be considered related to or affected by the identified executive orders. Further, in describing programs to which the Memo does apply, neither Memo defines what is meant by “nongovernmental organizations that undermine the national interest.” The January 27 Memo also requires agencies to assign “a senior political appointee to ensure Federal financial assistance conforms to Administrative priorities.” This individual will have the authority to “cancel awards already awarded that are in conflict with Administration priorities.” While this is a sea change from the typically apolitical process of determining contract or grant awards, the termination authority is authorized under the Uniform Grant Regulations—specifically, 2 C.F.R. § 200.340(a)(4), which provides federal agencies with the authority to terminate federal grant awards “pursuant to the terms and conditions of the Federal award, including, to the extent authorized by law, if an award no longer effectuates the program goals or agency priorities.” Although there are recent examples of contract and grant awards being terminated for political reasons, such as the pause and eventual termination of border-wall construction contracts, this sweeping halt in federal assistance for federally funded grant and loan programs is unprecedented, and likely to be challenged. One such challenge will most certainly involve a vigorous and potentially lengthy debate of the President’s power under the Congressional Budget and Impoundment Control Act of 1974 (Impoundment Act).^[1] With state Attorneys General and non-profit organizations already rushing to file lawsuits, the January 28 Memo took the position that the January 27 Memo is not an impoundment:

Q: Is the pause of federal financial assistance an impoundment?

A: No, it is not an impoundment under the Impoundment Control Act. It is a temporary pause to give agencies time to ensure that financial assistance conforms to the policies set out in the President’s Executive Orders, to the extent permitted by law. Temporary pauses are a necessary part of program implementation that have been ordered by past presidents to ensure that programs are being executed and funds spent in accordance with a new President’s policies and do not constitute impoundments.

While this debate continues, federal grant or loan award recipients that may be impacted by the Memorandum’s temporary pause will need to prepare for the possible termination of federal funding.

In the event that such federal grant or loan award recipients receive notices of termination, they are not wholly without remedies. First, recipients and subrecipients should track all expenses incurred as a result of, or related to, the pause, as well as any costs associated with a termination. The January 28 Memo states that “any payment required by law to be paid will be paid without interruption or delay.”

Second, any notice of an award termination must be properly given in accordance with 2 C.F.R. § 200.341. The federal agency or pass-through entity must provide written notice of termination to the recipient or subrecipient. The written notice of termination should include the reasons for termination, the effective date, and the portion of the federal award to be terminated, if applicable.

Third, each agency has its own procedure for objecting to and appealing a termination of a federal assistance agreement. For example, the Department of Energy's dispute-resolution procedures are set forth in its agency supplement to the Uniform Grant Regulation. 2 C.F.R. § 910.128.

Fourth, the termination of the award would not negate either the government's or the recipient's closeout obligations under 2 C.F.R. § 200.344-45. See *id.* § 200.340(d). Through the closeout process, the recipient can seek reimbursement for all allowable costs incurred. The Uniform Grant Guidance specifically allows for termination and standard closeout costs, which includes "the incurrence of costs or the need for special treatment of costs, which would not have arisen had the Federal award not been terminated." *Id.* § 200.472. However, the agency could subsequently disallow costs after an audit of program funding and the government could retain the right to seek reimbursement of funds it determines to have been improperly paid. See *id.* § 200.345(a)(1). Additionally, recipients should review the specific termination provisions in their award agreements to determine any other rights or obligations with respect to the termination and any appeal therefrom.

On January 28, 2025, a U.S. District Court Judge in the District of Columbia issued a temporary restraining order blocking the federal funding freeze (that was to be effective the same day at 5:00p.m.), until Monday, February 3, 2025. Meanwhile, State Attorneys General in at least 22 states also have filed suit to enjoin the federal funding freeze. This is an evolving situation and additional guidance may follow.

The Government Contracts and Grants team at Winston & Strawn is available to advise affected entities on available remedies.

For more information, please contact the authors or your Winston & Strawn relationship partner.

[1] There is already a broad debate that is playing out in the national discourse about whether the President has the authority to either temporarily or permanently decline to spend funds appropriated by Congress, or whether he is limited in his ability to do so under the Impoundment Act. It is likely that the Supreme Court will ultimately be asked to weigh in on this authority; however, from a contractual and regulatory perspective, federal agencies already have the regulatory authority to terminate federal awards "to the extent authorized by law, if an award no longer effectuates the program goals or agency priorities." 2 C.F.R. § 200.340(a)(4).

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