

Alert | Government Contracts



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UPDATE: OMB Rescinds Memo Pausing Federal Financial Assistance, But White House Asserts Funding Freeze in Executive Orders Remains Effective

Go-To Guide

- On Jan. 27, the Office of Management and Budget (OMB) issued Memorandum M-25-13 pausing funding for financial assistance programs that “may be implicated” by President Trump’s recent Executive Orders. On Jan. 28, a U.S. District Court issued an “administrative stay” enjoining “implement[ation] of OMB Memorandum M-25-13 with respect to the disbursement of Federal funds under all open awards.” On Jan. 29, OMB rescinded the Memo, but the White House press secretary asserted this change “is NOT a rescission of the federal funding freeze.”
- Despite the rescission, programs will still be reviewed for consistency with “Administration Priorities.”
- The administration may seek to terminate awards based on a provision in OMB’s Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance) that may permit agencies to terminate financial assistance awards if they “no longer effectuate[] the program goals or agency priorities.”
- Pauses in funding and any future terminations may be contrary to the Congressional Budget and Impoundment Control Act of 1974 (ICA) if the president does not follow its procedures.

On Jan. 27, 2025, OMB issued Memorandum M-25-13, entitled “Temporary Pause of Agency Grant, Loan, and Other Financial Assistance Programs.” The Memo directed every federal agency to “**temporarily pause** all activities related to obligation or disbursement of all Federal financial assistance, and other relevant agency activities that may be implicated by [President Trump’s] executive orders, including, but not limited to, financial assistance for foreign aid, nongovernmental organizations, DEI, woke gender ideology, and the green new deal” effective at 5 p.m. EST on Jan. 28 (emphasis in original).

Lawsuits challenging the pause were immediately filed and on Jan. 28 the U.S. District Court for the District of Columbia enjoined the Trump administration from implementing OMB Memorandum M-25-13 for disbursements under open awards. The following day, OMB rescinded the Memo. The White House press secretary then issued a statement that the rescission of the OMB memo “is NOT a rescission of the federal funding freeze.” Due to this statement, a U.S. District Court judge in Rhode Island stated that he was inclined to grant a request for a temporary restraining order despite the rescission of the OMB Memo.

Background

The Jan. 27 Memo stated that “[t]his temporary pause will provide the Administration time to review agency programs and determine the best uses of the funding for those programs consistent with the law and the President’s priorities.” After the initial Memo was distributed, federal agencies were directed to answer a series of questions about each program by Feb. 7, including (1) whether the program is a foreign assistance program, (2) whether the program includes “activities that impose an undue burden on the identification, development, or use of domestic energy resources,” including through the Inflation Reduction Act or Infrastructure Investment and Jobs Act, and (3) whether the funding “is implicated by the directive to end” diversity, equity, inclusion, and accessibility programs.

The Memo directed agencies to assign responsibility and oversight for each federal assistance program to a senior political appointee to ensure each program “conforms to Administration priorities.” It also instructed agencies to review pending Notices of Funding Opportunity (NOFOs) and other assistance announcements for consistency with “Administration priorities” and, “subject to program statutory authority,” to modify or withdraw announcements and cancel existing awards that conflict with those priorities “to the extent permissible by law.” The Memo indicated that agencies should initiate investigations “to identify underperforming recipients.”

The Memo would have impacted grants, cooperative agreements, loans and loan guarantees, and insurance programs, among other types of assistance, for programs ranging from the CHIPS Act to federal highway funding. On Jan. 28, OMB issued a Clarification Memo stating 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.” Certain programs were specifically exempted, including Medicare, Social Security, “mandatory programs like Medicaid and SNAP,” and “[f]unds for small businesses, farmers, Pell grants, Head Start, rental assistance, and other similar programs.” The Clarification stated that if agencies are concerned that these specifically exempted programs “may implicate the President’s Executive Orders, they should consult OMB to begin to unwind these objectionable policies without a pause in the payments.”

The pause was immediately challenged in court—advocacy groups representing non-profits and small businesses filed a lawsuit in U.S. District Court for the District of Columbia on Jan. 28 challenging the pause under the Administrative Procedure Act. The same day, the judge issued an “administrative stay” enjoining the Trump administration “from implementing OMB Memorandum M-25-13 with respect to the disbursement of Federal funds under all open awards.” The Administration moved to dismiss the case on

Jan. 30. A group of State Attorneys General filed a similar lawsuit in U.S. District Court in Rhode Island on Jan. 28.

After the court issued its administrative stay, on Jan. 29, OMB rescinded the Memo. The rescission memo states that any questions about implementing the president's Executive Orders should be addressed to the appropriate agency's general counsel. Following the rescission, the White House press secretary stated that "This is NOT a rescission of the federal funding freeze" and that the president's Executive Orders "on federal funding remain in full force and effect, and will be rigorously implemented."

The "freeze" referenced in this statement appears to be a reference to certain Executive Orders pausing funding under various programs. For example, the "Unleashing American Energy" Executive Order provides that "[a]ll agencies shall immediately pause the disbursement of funds appropriated through the Inflation Reduction Act of 2022 (Public Law 117-169) or the Infrastructure Investment and Jobs Act (Public Law 117-58)[.]" The "Reevaluating and Realigning United States Foreign Aid" Executive Order requires agencies to "immediately pause new obligations and disbursements of development assistance funds to foreign countries and implementing non-governmental organizations, international organizations, and contractors pending reviews of such programs." Both Executive Orders require the funding pause pending review of these programs.

Because of the White House press secretary's statement that the funding freeze had not been rescinded, the U.S. District Court judge in Rhode Island stated he was inclined to grant the State Attorneys General's request for a temporary restraining order despite OMB's rescission of the Memo.

The rescinded Memo repeatedly referenced "Administration Priorities," echoing a provision in 2 C.F.R. § 200.340 (the termination provision of OMB's Uniform Guidance for federal financial assistance) that permits agencies to terminate an award if it no longer effectuates "program goals or agency priorities" "to the extent authorized by law." When OMB amended the Uniform Guidance last year, it clarified that, if agencies want the option of terminating awards on this basis, agencies "must clearly and unambiguously specify" that in the award's terms and conditions. Prior to the 2024 changes, 2 C.F.R. § 200.211 required agencies to "make recipients aware, in a clear and unambiguous manner, of the termination provisions in § 200.340, including the applicable termination provisions in the Federal awarding agency's regulations or in each Federal award." But before the Uniform Guidance revision, § 200.340(b) stated that "[a] Federal awarding agency should clearly and unambiguously specify termination provisions applicable to each Federal award, **in applicable regulations or** in the award" (emphasis added).

The "pauses" the Executive Orders require and any future funding terminations may be challenged under the Congressional Budget and Impoundment Control Act of 1974 (ICA) if the administration does not follow its procedures. An "impoundment" is any action or inaction by a federal government officer or employee that precludes obligation or expenditure of budget authority. The Constitution delegates the power of the purse to Congress, and the ICA says the President cannot unilaterally withhold funds from obligation. Funds are obligated when the agency has created a definite liability for the associated amount.

The ICA permits the president to temporarily withhold funds from obligation—but not beyond the end of the fiscal year—by proposing a "deferral." Deferrals cannot be used for policy reasons. The president may also seek the permanent cancellation of funds for fiscal policy or other reasons, including the termination of programs for which Congress has provided budget authority, by proposing a "rescission" in a "special message" that explains the rationale for the rescission. If Congress enacts the proposal, the funds would no longer be available. But if Congress does not enact the rescission within 45 calendar days of continuous session after the special message's receipt, any withheld funds must be reapportioned and made available

for obligation and expenditure. Only discretionary (not mandatory) funds are subject to rescissions and deferrals.

OMB's Jan. 28 Clarification Memo stated that the pause "is not an impoundment under the Impoundment Control Act." It said that "[t]emporary 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."

Takeaways

Recipients and subrecipients with awards covered by Executive Orders that pause funding should look closely at the terms and conditions of their award agreements, agency-specific implementations of the Uniform Guidance (including appeal procedures for grant disputes, to the extent the agency has them), and the authorizing statute and any implementing regulations for the programs they are working on to evaluate their options if the government suspends or terminates their awards. To the extent possible, recipients and subrecipients should also try to limit costs that were not foreseeable prior to the "pause," as agencies may later assert these costs are unallowable.

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