CLIENT ALERTS & INSIGHTS

Navigating the Impact of the Trump Administration's Federal Funding Freeze

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This bulletin discusses and advises about the recent flurry of activity from the Trump Administration directing a freeze on the expenditure of certain federal funds. We summarize the current status of the now rescinded memorandum from the Office of Management and Budget (OMB), relevant executive orders that remain in effect, pending lawsuits, and guidance for potentially impacted organizations.

1. Summary of OMB Memorandum

The OMB memorandum issued January 27, 2025, directed federal agencies to "identify and review all federal financial assistance programs" to comply with the executive orders President Trump issued on January 20, 2025. This effectively froze up to trillions of dollars in federal grants and loans. Though programs expressly excluded from the OMB memorandum and supporting documents were "any program that provides direct benefits to individuals", including Medicaid, Medicare, SNAP, rental assistance, Pell Grants, Head Start, and funds for small businesses, confusion and uncertainty ensued concerning the continued federal funding of these and other programs. The administration rescinded the OMB memorandum without further comment on January 29, 2025, via a two-sentence directive from OMB.

Despite rescinding the OMB memorandum, the Trump Administration has stated that, "This is NOT a rescission of the federal funding freeze...The President's EOs on federal funding remain in full force and effect, and will be rigorously implemented." These orders are discussed next.

2. Relevant Executive Orders

On January 20, President Trump signed 14 Executive Orders outlining his administration's policies. The OMB memo specifically mentions *Protecting the American People against Invasion* (Jan 20, 2025), *Reevaluating and Realigning United States Foreign Aid* (Jan. 20, 2025), *Putting America First in International Environmental Agreements* (Jan. 20, 2025), *Unleashing American Energy* (Jan. 20, 2025), *Ending Radical and Wasteful Government DEI Programs and Preferencing* (Jan. 20, 2025), *Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government* (Jan. 20, 2025), and *Enforcing the Hyde Amendment* (Jan. 24, 2025).

a. Protecting the American People against Invasion

This executive order directs a number of federal agencies, including the Attorney General and Homeland Security, to remove undocumented immigrants from the country. It requires the Attorney General and the Secretary of Homeland Security to review all federal contracts and expenditures to make sure that none of the funding goes toward supporting undocumented migrants. It terminates all agreements in violation of the order and requires the identification of all "unregistered illegal aliens." Further, it authorizes agencies to block federal funding to sanctuary cities and make sure undocumented migrants do not receive any public benefits.

b. Reevaluating and Realigning United States Foreign Aid

This order requires a 90-day pause in foreign development assistance, and a review and approval of all foreign assistance programs.

c. Putting America First in International Environmental Agreements

President Trump is withdrawing from the Paris Climate Accord and from the Biden Administration's International Climate Finance Plan. He orders the United Nations ambassador to take this action immediately.

d. Unleashing American Energy

The President authorizes "energy exploration and production" on federal lands and waters, eliminates the "Electric Vehicle Mandate," terminates the "Green New Deal," and orders an immediate review on all agency actions that potentially burden domestic energy resource development.

e. Ending Radical and Wasteful Government DEI Programs and Preferencing

This order directs the OMB and Office of Personnel Management (OPM) to terminate all DEI programs in federal agencies, including equity-related grants and action plans.

f. Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government

In this Order, President Trump recognizes two sexes, male and female, and mandates that the government assert biological distinctions between men and women. It requires the government to refer to individuals by their sex rather than gender identity and prohibits the use of federal funds to "promote gender ideology."

g. Enforcing the Hyde Amendment

This order aims to enforce the Hyde Amendment, which prohibits the use of federal funds to cover abortion and related healthcare with limited exceptions. This order rescinds two of President Biden's Executive Orders that expanded access to reproductive and emergency health care in 2022.

3. Recommended Action

As detailed above, certain federal funding may be halted by executive order, and the potential release subject to litigation. At this time, Benesch is recommending that clients review their scope of work, grant and subgrant agreements, contracts involving federal funding, and other relevant funding documents to determine the risk of noncompliance with the executive orders. We are here to help guide and advise on that process.

We also recommend that you stay in close communication with administering agencies, as we can expect interpretation and implementation could vary across state and local governments, often depending on whether the agency is aligned or adversarial to the policy of the Trump Administration. We encourage clients to share those communications with us so that we can help advise you and our broader client community more effectively.

For administering agencies, such as governmental entities, a programmatic review of potentially noncompliant programs should be conducted, and communication with impacted partners should be pursued. Your Benesch team can assist with monitoring, consultation with the state and federal government, developing an action plan, and more.

As the State of Ohio begins its own budgeting process, which must be finalized by July 1, it is too early to tell how or if the freeze will affect state finances and policy objectives of the Ohio Legislature, either legally or politically. In Ohio, legislation with similar policy objectives to the Trump Executive Orders has already been introduced. Although the order will not affect Medicaid, SNAP benefits or similar programs, federal funds make up a large portion of Ohio's budget, so this is an issue we will continue to pay attention to. Governor DeWine is expected to release his initial budget plans on February 3, with additional details expected to be available on February 10.

4. Pending Litigation

a. National Council of Nonprofits v. OMB

On January 28, the Federal District Court for the District of Columbia ordered an administrative stay on the directive to pause "disbursement under all open awards" until 5 p.m. on February 3, 2025. The National Council of Nonprofits requested a temporary restraining order (TRO) against the OMB's freeze on federal fund disbursement. Plaintiffs claim that the freeze violates the Administrative Procedure Act (APA) as "arbitrary and capricious," the First Amendment, and exceeds the OMB's statutory authority. For entities seeking relief under the APA, courts may issue a short administrative stay while the parties prepare for expedited briefing and a hearing. The stay only applies to the OMB's directive that agencies pause "disbursement under all open awards," meaning that the rest of the directive is still in effect.

Prior to the OMB directive rescinding the previous memorandum, briefs were due by both parties by January 31, 2025, and a TRO hearing is scheduled for 11 a.m. on February 3, 2025. Benesch will continue to monitor this lawsuit and provide relevant updates.

b. New York v. Trump

Twenty-two states and the District of Columbia sued President Trump requesting an emergency TRO in the Federal District of Rhode Island. They claim that because the funds are already allocated to states through federal agencies, this violates the APA as arbitrary and capricious and contrary to law. The Plaintiffs also allege various Constitutional violations related to the separation of powers and the President's powers, as this directive presumes the President's authority to pause federal funds that the Legislature has already allocated. The Defendants have argued that the rescission of the OMB memorandum renders the case moot. An emergency hearing was held on January 29. The plaintiffs filed a proposed TRO on January 30, and the defendants' response is due January 31. As above, Benesch will continue to monitor the lawsuit and provide relevant updates.

With the lawsuits and agency implementation in their infancy, we will continue to closely monitor and provide updates. As of now and according to the dockets, both lawsuits appear to be progressing.

We recognize that many organizations will require a customized approach to assessing risk and determining how to respond, so stand ready to advise as requested.

Holly Gross specializes in Government Relations and Nonprofit Law and is available to assist with your compliance and risk assessment needs on this topic and more.