Insights: Alert

Frozen Federal Aid: How Office of Management and Budget's Directive to Pause Federal Financial Assistance Will Impact You and Steps You Should Take Now

January 28, 2025

Written by **Gunjan R. Talati, Katherine S. Klein**

Update 1/29/2025

Minutes before the federal funding freeze was poised to go into effect, a federal judge issued an order temporarily blocking the funding freeze. The District Court for the District of Columbia issued the order in response to a legal challenge brought by several organizations that receive federal funds.

What This Means

- The emergency order stopping the funding freeze is—for now—only in effect until Monday, February 3rd.
- After the 3rd, uncertainty remains. Several lawmakers have called the President's actions unconstitutional, and that the President can't unilaterally halt funds that Congress has already allocated. But the President does have power to direct executive agencies, which disburse the funds to organizations.
- Several state attorneys general have indicated they are preparing to sue the Trump Administration in response to the funding freeze.
- After February 3rd, the court may issue another order further blocking the freeze's implementation. However, this is far from certain.
- Organizations should use the time between now and next Monday to create a detailed plan of action should the funding freeze be allowed to proceed.

Published 1/28/2025

Summary of Memo

On January 27, 2025, the Trump Administration issued perhaps its most far-reaching policy statement yet in a two-page memorandum. The Office of Management and Budget ("OMB)" issued OMB Memo M-25-13 which provides that as of 5:00 p.m. on January 28, 2025, the Federal government has been directed, to the extent permissible by law, to "pause all activities related to obligation or disbursement of all Federal financial assistance."

Importantly, “Federal financial assistance” is defined in 2 CFR 200.1. It means assistance that recipients or subrecipients receive or administer in the form of grants, cooperative agreements; non-cash contributions or donations of property (including donated surplus property), direct appropriations, food commodities, loans, loan guarantees, interest subsidies, insurance, and other financial assistance.

The Trump administration's order on moratorium on federal assistance payments extends to “assistance received or administered by recipients or subrecipients **of any type** except for assistance received directly by individuals.”

It is unclear what the scope of the second type of “assistance received or administered by recipients or subrecipients of any type” is but this rule seemingly encompasses the first. In fact, it could be a call for a stop to all government spending to all entities. The footnotes also clarify that nothing in this statement should be construed to impact Medicare or Social Security benefits.

The memorandum also calls for a pause on all activities and funding “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.” Thus far, the President has signed 75 executive orders. It remains unclear what “other relevant agency activities” are related to these executive orders, but this again, could impact every entity that works directly or indirectly with the Federal government.

Agencies are directed to submit to OMB detailed information on their programs that are subject to this pause by February 10, 2025. The OMB will then review the information submitted and give guidance at an unspecified time.

What Your Organization Should Be Doing Now

The OMB Memo is vague as to what “Federal financial assistance” it is targeting. The uncertainty will almost assuredly create confusion in many federal agencies. This may very well lead these agencies to be overinclusive about what funds they suspend, until the chaos can be sorted through. Therefore, it is prudent for every entity doing business with – or receiving grant money from – the Federal government to have an action plan in place in case the funds for your project are abruptly cut off.

Action Items:

- Understand what revenue sources come from or relate to “Federal financial assistance”. This type of funding is broad and even if you are a primarily commercial organization, you might find that an agreement (or two) is negatively impacted by this memorandum.
- Have a back-up plan: If your assistance funding is cut off, how will you pay your bills? Find routes for alternative lines of credit should this happen abruptly.
- Make some difficult choices: Depending on how intertwined your Federal operations are with your normal day-to-day business, you may need to reassign workers or even furlough certain employees and re-negotiate lower-tier agreements.
- Document all expenses: If your Federal assistance is caught up in an overinclusive agency freeze but is eventually unfrozen and resumes operation, you may be able to recover some costs provided they are

documented appropriately.

- Assess your downstream and upstream: Don't brush off this news just because you don't receive any direct Federal assistance.

    a. Funding may also be paused to entities such as state and local governments, law enforcement, community organizations, and schools. If your organization has grants or contracts with these or similar organizations, they may be paused or cancelled.

    b. An abrupt pause in federal funding is also likely to create ripples in the private sector as well. For example, infrastructure grant work, including BEAD broadband funding, is now halted and may affect funding flow and service provision at telecommunications agencies. Other organizations in your supply chain may also depend on Federal funding and in turn their operations may be delayed.

- In some instances, litigation may be appropriate particularly where a party that is not impacted by this memorandum tries to use it as an excuse to breach contractual or other obligations.

This is a rapidly developing area, and we will continue to update our clients and associates as additional clarity surfaces. In the interim, if you have any questions about how this federal funding freeze may affect your business or organization, contact Kilpatrick and we can help assess the impact of this and other executive orders.

Related People

Gunjan R. Talati

t 404.815.6503

gtalati@ktslaw.com

Katherine S. Klein

t 404.745.2447

kklein@ktslaw.com