Steps For Federal Grantees Affected By Stop-Work Orders

By **Kristen Ittig, Kara Daniels and Nicole Williamson** (March 7, 2025)

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The first six weeks of the Trump administration saw a deluge of executive orders and other federal agency guidance that announced significant policy shifts in diversity, equity and inclusion; energy; trade; foreign affairs; immigration and a host of other areas.

In response to the executive orders, some federal government agencies directed recipients of federal grants to stop work and cease spending allocated federal funds — termed stop-work orders. On Jan. 27, the White House Office of Management and Budget issued Memorandum M-25-13, which instructed all federal agencies to "temporarily pause all activities related to obligations or disbursement of all Federal financial assistance," pending a governmentwide review.

The OMB rescinded the memorandum on Jan. 29 — the day after the U.S. District Court for the District of Columbia issued an administrative stay.[1] However, hours later the White House press secretary announced on her official social media account that this action was "NOT a rescission of the federal funding freeze" but rather it was "simply a rescission of the OMB memo."[2]

Based on the executive orders referenced in the now-rescinded OMB memorandum and the government's arguments in the litigation challenging that memorandum, it is apparent that broad changes in federal financial assistance programs are on the horizon.

On Feb. 26, President Donald Trump implemented the Department of Goverment Efficiency's cost-efficiency initiative by ordering the review of all existing covered contracts and grants and, "where appropriate and consistent with applicable law," their termination or modification "to reduce overall Federal spending or reallocate spending" to advance the administration's policies.

Below is a summary of the orders, along with some best practices and initial steps that federal grantees may consider taking now.

A Flurry of Executive Orders

The new executive orders span a variety of policy areas and industries, and have already drawn legal challenges in the courts. Many call for a pause in spending while the new administration considers its spending priorities.

For example, certain executive orders direct agencies to halt the disbursement of funds, including to grantees. A Jan. 20 energy-sector executive order directs agencies to immediately pause the disbursement of funds appropriated through the Inflation Reduction Act or the Infrastructure Investment and Jobs Act.[3]

On Jan. 21, the OMB issued a memorandum, OMB M-25-11, clarifying that not all IRA and

IIJA spending must pause, but rather only spending that runs counter to the policies espoused in Section 2 of the energy-sector order.[4]

Other executive orders direct the termination of grants or contracts. For example, Trump's Jan. 20 executive order terminating DEI programs and preferencing, which seeks to end "illegal and immoral discrimination programs, going by the name 'diversity, equity, and inclusion'"[5] directs agencies to terminate equity-related grants or contracts, and all DEI performance requirements for employees, contractors or grantees within 60 days.

The DEI executive order also requires agencies to provide the OMB director with a list of federal contractors that provided DEI training or training materials, and grantees that received federal funding to advance DEI or environmental justice programs, from Jan. 20, 2021, onward.

Likewise on Jan. 21 Trump issued the ending discrimination and merit-based opportunity order, seeking to end "illegal preferences and discrimination," revoking various executive orders — including President Lyndon Johnson's equal employment opportunity Executive Order No. 11246 — and directing the OMB to terminate "all 'diversity,' 'equity' … 'equitable deployment of financial and technical assistance' and the like mandates, requirements, programs or activities, as appropriate."

This executive order also requires each agency to include "in every grant and contract award" a provision stating that compliance with federal anti-discrimination laws is material to the government's payment decisions for purposes of the False Claims Act, and a certification by the contractor or grantee that "it does not operate any programs promoting DEI that violate any applicable Federal anti-discrimination laws."

Finally, agencies are directed to identify up to nine potential civil-compliance investigations of publicly traded corporations, large nonprofits and large higher education institutions.[7]

Temporary Pause of Agency Grant, Loan and Other Financial Assistance Programs

OMB Memorandum M-25-13 directed a pause of agency grant, loan and other financial assistance programs, which the OMB later clarified as only applying to programs "implicated by" Trump's recent executive orders. This memorandum, which the OMB rescinded on Jan. 29, specifically flagged four more executive orders as illustrative of the new administration's policies:

- Protecting the American People Against Invasion, requiring the faithful execution of immigration laws;

- Reevaluating and Realigning United States Foreign Aid, requiring a 90-day pause in foreign development assistance;

- Putting America First in International Environmental Agreements, withdrawing the U.S. from the Paris Agreement under the United Nations Framework Convention on Climate Change and announcing a policy against burdening the U.S. in the negotiation of any international agreement; and

- Enforcing the Hyde Amendment, forbidding federal funding and promotion of elective abortion.

In support of the rescinded memorandum, the OMB had instructed all agencies that provide federal financial assistance to complete a spreadsheet by Feb. 7, 2025, answering questions to determine whether the funding involved relates to subjects of the executive orders including, migrants, foreign aid, climate, diversity programs and abortion, such as:

- Does this program provide federal funding to nongovernmental organizations supporting or providing services, either directly or indirectly, to noncitizens who are removable from or unlawfully present in the U.S.?

- Is this program a foreign assistance program, or one that provide funding or support activities overseas?

- Does this program provide funding that is implicated by the revocation and recission of the U.S. International Climate Finance Plan?

- Does this program include activities that impose an undue burden on the identification, development or use of domestic energy resources — including through funding under the Inflation Reduction Act of 2022 or the Infrastructure Investment and Jobs Act?

- Does this program provide funding that is implicated by the directive to end discriminatory programs, including illegal DEI and "diversity, equity, inclusion, and accessibility" mandates, policies, programs, preferences and activities, under whatever name they appear, or other directives in the same executive order — including those related to "environmental justice" programs or "equity related" grants?

- Does this program promote gender ideology?

- Does this program promote or support in any way abortion or other related activities identified in the Hyde Amendment?

Although this OMB memorandum was rescinded, individual executive orders contain similar funding pause provisions and the president's DOGE cost efficiency initiative directs agencies to review all existing covered contracts and grants by March 28, for potential termination or modification. Multiple agencies have suspended work or terminated agreements based on the new administration's policy agenda.

Best Practices

In reaction to already announced changes and to prepare for continuing developments, recipients of federal financial assistance should consider the following best practices.

Monitor news, agency guidance and communications.

The onslaught of executive orders, and the flurry of agency communications and directives has created an overwhelming sense of upheaval. That said, the scope and boundaries of these orders remain uncertain and multiple legal challenges are already pending.

It is important to remain vigilant in monitoring the release of new agency guidance, regulations, lawsuits challenging these orders and news of enforcement actions, all of which could change the breadth and meaning of these orders and their impact on your organization.

Federal grantees in particular should monitor guidance from their funding agencies, as well as from the OMB, the U.S. Equal Employment Opportunity Commission, the Office of Personnel Management and the U.S. Department of Labor.

Review your organization's programs.

Organizations should promptly review their internal policies and programs to crosscheck for compliance with broader grantee-wide and contractor-wide mandates, such as those related to DEI, as well as applicable industry-specific or program-specific orders, such as those dealing with energy, immigration or foreign development funding.

Organizations with a DEI program in place should conduct a self-audit of DEI programs and activities. While some aspects of DEI programs may not be implicated by the new policies, they should identify elements that the administration could view as problematic.

At the same time, disability and veteran-related requirements remain in place, as do state and local laws. The administration has signaled potential future enforcement action, and funding recipients should conduct robust internal self-audits of programming and compliance.

Review grant and other financial assistance agreement terms.

Agreement terms will be key to defining the actions federal agencies may take in response to executive orders and other guidance. Pay careful attention and take note of the following types of clauses to ascertain what rights the agency has to pause, alter or terminate payment obligation or the agreement generally:

- Stop-work clause;
- Changes clause;
- Conditions for payment;

- Termination clause; and
- Disputes clause.

It is possible that a suspension of funds could amount to a breach of a federal financial assistance agreement that entitles the recipient to some remedy under the terms of the grant or other agreement.

For example, Title 2 of the Code of Federal Regulations, Section 200.305(b)(6), instructs that payments "for allowable costs must not be withheld at any time during the period of performance," except in specified circumstances. A review of the agreement terms will provide an initial understanding of the parties' rights and obligations.

Promptly review any stop-work or pause order.

Stop-work orders, or any communications pertaining to a pause, should be analyzed carefully and promptly. The precise impact may depend on the terms of the agreement, but agencies may resist reimbursement of avoidable costs incurred after the stop or pause date.

The OMB has clarified that any "payment required by law to be paid will be paid without interruption or delay," but some entities have not received payment for work completed even before the new administration was installed. Determine appropriate mitigation steps — and don't forget to notify subgrantees and other parties implicated by any order.

Keep a record of costs related to any changes, including a stop-work order or termination.

A stop-work order or termination is a jarring event, and sometimes costs cannot be ceased immediately. Grantees and other recipients of federal financial assistance may consider whether to file a request for budgetary change or other claim for costs incurred relating to the stop-work order.

To prepare for any potential claims, grantees should carefully track and account for any costs incurred following the stop-work order or termination. This accounting can be provided to legal counsel in support of the preparation of a claim.

Seek agency clarification.

The negative repercussions identified in many of the new executive orders and the lack of clear guidance may prompt organizations to overcorrect, but some provisions may be necessary to remain in compliance with other federal or state laws.

Organizations should seek further clarification and guidance from agency partners to avoid misunderstanding the current directions and their legal obligations.

Be careful with certifications.

The scope of the new executive orders and disparate agency guidance presents a legal gray area that is subject to interpretation. In many instances, whether a program is within the scope of an executive order or agency directive will be a factual question that merits careful consideration of how to frame or describe existing work or programs.

Grantees and other recipients of federal funding should be thoughtful and deliberate when

responding to agency certification requests, especially when asked to certify compliance with nebulous or undefined terms.

Conclusion

In response to the Trump administration's numerous new policies, organizations should carefully self-audit existing programs, monitor for new agency guidance, review the terms of their existing agreements, keep a record of costs and remain in compliance with any new contractual terms.

The legal landscape is highly uncertain, so organizations must remain vigilant and nimble, seeking clarification of new requirements from the agreements officer and documenting changes to current any agreement's terms and obligations.

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[1] In the case of National Council of Nonprofits, et al. v. Office of Management & Budget et al., 1:25-cv-00239, Judge AliKhan of the U.S. District Court for the District of Columbia issued an administrative stay on Jan. 28, followed by a temporary restraining order on Feb. 3, and preliminary injunction order on Feb. 25, prohibiting the OMB and agencies to which the OMB Memorandum M-25-13 was addressed from taking "any steps to implement, give effect to, or reinstate under a different name the unilateral, non-individualized directives in OMB Memorandum M-25-13 with respect to the disbursement of Federal Funds under all open awards." On Jan. 31, Judge McConnell of the U.S. District Court for the District of Rhode Island issued a temporary restraining order in the case of State of New York et al. v. Donald Trump et al., 1:25-cv-00039, prohibiting the Defendants from pausing, freezing, impeding, blocking, canceling or terminating "Defendants' compliance with awards and obligations to provide federal financial assistance to the States", ordering Defendant not to "impede the States' access to such awards and obligations, except on the basis of the applicable authorizing statutes, regulations, and terms," and restraining and prohibiting the Defendants "from reissuing, adopting, implementing, or otherwise giving effect to the OMB Directive under any other name or title or through any other Defendants (or agency supervised, administered, or controlled by any Defendant), such as the continued implementation identified by the White House Press Secretary's statement of January 29, 2025." And, on March 6, 2025, Judge McConnell granted the States' Motion for Preliminary Injunction holding that "the Executive put itself above Congress" by imposing a "categorical mandate on the spending of congressionally appropriated and obligated funds without regard to Congress's authority to control spending." The court clarified that the order does

not "limit the Executive's discretion or micromanaging the administration of federal funds." Rather, the court is "simply holding that the Executive's discretion to impose its own policy preferences on appropriated funds can be exercised only if it is authorized by the congressionally approved appropriations statutes."

[2] Karoline Leavitt, X (Jan. 29, 2025), https://x.com/PressSec/status/1884672871944901034

[3] https://www.whitehouse.gov/presidential-actions/2025/01/unleashing-american-energy/.

[4] https://www.whitehouse.gov/briefings-statements/2025/01/omb-memo-m-25-11/.

[5] https://www.whitehouse.gov/presidential-actions/2025/01/ending-radical-and-wasteful-government-dei-programs-and-preferencing/.

[6] https://www.whitehouse.gov/presidential-actions/2025/01/ending-illegal-discrimination-and-restoring-merit-based-opportunity/.

[7] https://www.arnoldporter.com/en/perspectives/advisories/2025/01/trump-administration-rescinds-certain-equal-employment.