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MEMORANDUM

January 29, 2025

TO: TRIBAL HOUSING CLIENTS

FROM: Ed Clay Goodman
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RE: *Trump Administration Pauses Federal Financial Assistance*

On January 27, 2025, Matthew J. Vaeth, Acting Director of the Office of Management and Budget (OMB), issued a memorandum (“OMB M-25-13”) directing federal agencies to “complete a comprehensive analysis of all of their Federal financial assistance programs to identify programs, projects, and activities that may be implicated by any of the President’s executive orders.” (A copy of OMB M-25-13 is attached to this memorandum) OMB M-25-13 further required agencies to “temporarily pause all activities related to [the] obligation or disbursement of all Federal financial assistance, and other relevant agency acti[vities] that may be implicated by the executive orders, including, but not limited to, financial assistance for foreign aid, nongovernmental organizations, DEI [diversity, equity, inclusion], woke gender ideology, and the green new deal.” We note that President Trump’s Executive Orders on DEI do not explain the federal trust and treaty obligation owed to federally recognized Indian tribes or clarify that “Indian” is a political, and not racial, classification.

On January 28, 2025, OMB issued instruction (attached) to agencies as to how the agencies must to report back to OMB on federal financial assistance programs with the agencies' determinations about the programs' compliance with Trump priorities. The instruction was accompanied by a spreadsheet listing all programs with a federal financial assistance number, along with instructions for agencies to add all others. Later in the day OMB issues an OMB FAQ (attached) to clarify which programs are subject to the “pause.” The FAQ says that programs that benefit individuals (Medicaid, SNAP, Medicare, Social Security, student loans, and “funds for small businesses, farmers, Pell grants, Head Start, rental assistance, and other similar programs.” It also says that funds mandated by law will be paid “without interruption or delay.” The summary of the guidance stated that “Any program not implicated by the President’s Executive Orders is not subject to the pause.”

The “pause” was to become effective 5:00 PM EST on January 28, 2025. However, many federal programs serving tribes shut down access to their funding portals long-before the 5:00 PM deadline, and many tribal programs were unable to draw down funds throughout the day. Two lawsuits – one by a coalition of non-profits and small businesses, the other by a coalition of twenty-two states and the District of Columbia – have been filed in federal court to challenge the pause. In one of those cases, the judge held an emergency hearing and issued a

“brief administrative stay” to delay implementation of OMB M-25-13 with respect to the disbursement of federal funds under all open awards until at least February 3, 2025 at which time the court will consider plaintiffs’ request for a temporary restraining order for the purpose of determining whether the program is implicated by the executive orders.¹ That being said, many programs that Tribal Nations benefit from will be subject to review.

Memorandum OMB M-25-13

OMB M-25-13 initiates a review and pause of all federal financial assistance. Federal financial assistance is defined very broadly. It includes “(i) all forms of assistance listed in paragraphs (1) and (2) of the definition of this term at [2 CFR 200.1](#); and (ii) assistance received or administered by recipients or subrecipients of any type except for assistance received directly by individuals.” OMB may grant exceptions on a case-by-case basis. The OMB instruction was accompanied by a spreadsheet that identifies over 2,600 federal financial assistance programs for which each agency is required to submit information to OMB, which we understand to include all programs with a federal financial assistance number. Specifically, all federal agencies must take the following four actions by February 10, 2025, to the extent permissible by law.

1. assign responsibility and oversight for these activities to a senior political appointee;
2. review and, if necessary, modify all federal financial assistance announcements to ensure alignment with Administration priorities using the form sent out by OMB;
3. withdraw and cancel any awards that conflict with Administration priorities; and
4. conduct oversight of programs to identify “underperforming” recipients and address issues “up to and including cancellation of awards.”

OMB identified the specific Trump Administration Executive Orders to be considered in carrying out the analysis described above:

- *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.*

Agencies must make determinations about whether the programs comply with Trump Administration directives on:

- not providing services to "removable or illegal aliens;"

¹ *National Council of Nonprofits v. Office of Management and Budget*, Civil Action No. 25-239 (LLA), Order, January 28, 2025.

- funding overseas programs;
- complying with rescission of the Paris Accords on climate;
- imposing any burdens on domestic energy resources (including looking at the Inflation Reduction Act and the Infrastructure and Investment in Jobs Act);
- ending "DEI," "environmental justice, and "equity related" activities, or items that are part of the "green new deal;"
- promoting "gender ideology;"
- promoting abortion;
- and any activities that are contrary to heretofore unreleased Executive orders

Agencies must report back to OMB by Friday, February 7 or February 10 (the guidance has two dates). We do not think a program's presence on the spreadsheet means the Administration will decide the program is to be cancelled - that spreadsheet includes every federal funding program.

The OMB FAQ further stated that some financial assistance programs have “legally mandated actions and deadlines” that will “[arise] while the pause remains in effect.” OMB M-25-13 directs federal agencies to identify and notify OMB of any such occurrences as soon as possible. In the follow up summary guidance, OMB further clarified the scope as follows:

Q: Is this a freeze on all Federal financial assistance?

A: No, 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.

Q: Is this a freeze on benefits to Americans like SNAP or student loans?

A: No, any program that provides direct benefits to Americans is explicitly excluded from the pause and exempted from this review process. In addition to Social Security and Medicare, already explicitly excluded in the guidance, mandatory programs like Medicaid and SNAP will continue without pause.

Funds for small businesses, farmers, Pell grants, Head Start, rental assistance, and other similar programs will not be paused. If agencies are concerned that these 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 OMB guidance does not state that programs that are supposed to be exempted from the pause will be free from further review. The Administration states that “[i]f agencies are concerned that these 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.”

While OMB M-25-13 has pointed to its own Executive Orders to identify the priorities, many of the terms used in those orders, such as “DEI,” “equity,” “Marxist equity,” and “social

engineering policies,” have no specific definition, and thus are open to the Administration’s own interpretation and determination. For example, we do not know if the Administration would consider a tribal program as a “DEI” policy or not. Accordingly, as discussed in more detail below, we suggest that Tribes consider sending letters to their Congressional delegation and key Administration officials.

Litigation Challenging OMB M-25-13

Two lawsuits have been filed broadly challenging OMB M-25-13. The first was filed in the federal district court for the District of Columbia by a coalition of non-profits and small businesses, led by National Council of Nonprofits (NCN), described in the complaint as “the largest network of nonprofit organizations in North America, with more than 30,000 organizational members.” Also joining the suit were the American Public Health Association (a non-profit with 23,000 members that “that champions the health of all people and all communities”), the Main Street Alliance (a coalition of 30,000 small business owners), and SAGE (a non-profit “dedicated to improving the lives of lesbian, gay, bisexual, and transgender adults”). This suit challenged OMB M-25-13 on the grounds that it violated federal law by being arbitrary and capricious agency action, contrary to the First Amendment of the United States Constitution, and in excess of OMB’s statutory authority.

Plaintiffs asked for the Court to declare that OMB M-25-13 was unlawful and unconstitutional, and to issue a temporary restraining order (TRO), a preliminary injunction, and a permanent injunction barring the pause from taking effect. The Court held a hearing on the motion for TRO and at just before 5:00 PM EST today, the Court granted the TRO. The TRO is a limited stay of OMB M-25-13 that will be in place until a full hearing on the motion for preliminary injunction is held on Monday, February 3, 2025. In granting the TRO, the judge made clear that it was limited to only the funding pause, and not issuance of new awards, or other agency actions required by the Memo (including the assessments of federal programs for compliance with Executive Orders).

Later in the same day, just after the administrative stay in the first suit was issued, Democratic attorneys general from 22 states and the District of Columbia filed their own lawsuit in the federal district court for the District of Rhode Island, also seeking a TRO and an order to permanently prevent the Administration from cutting off federal funding. Along with OMB and Matthew Vaeth, this suit also named President Trump, various federal agencies, and the heads of those agencies as defendants. The suit also challenged OMB M-25-13 as unlawful under the Administrative Procedures Act, raising additional claims that OMB M-25-13 violated various Constitutional provisions: separation of powers, the Spending Clause, and the Presentment, Appropriations, and Take Care Clauses – all of which, Plaintiffs argue, place the authority for making decisions on how to appropriate and expend funds with Congress and not the Executive Branch.

Unlike the first suit, the States' litigation was focused on the impact to governments who would be deprived of federal funding under OMB M-25-13 (which is a position similar to that in which the Tribes find themselves). From the introduction to the Complaint:

[OMB M-25-13] would permit the federal government to rescind already allocated dollars that have been included in recipient budgets—monies that are otherwise necessary for the Plaintiffs to ensure that their residents have quality healthcare, the protections of law enforcement, the benefit of safe roads, and assistance in the aftermath of natural disasters, among many other key services. Without this funding, Plaintiff States will be unable to provide certain essential benefits for residents, pay public employees, satisfy obligations, and carry on the important business of government.

Administration Authority to Pause Funding

Whether the Administration has authority to unilaterally pause federal funding will be answered in the Courts, but we think it is possible that a court will allow a temporary pause at some point. Congress passed the Impoundment Control Act in 1974 to shut down efforts by then-President Nixon to reject Congressional priorities in Appropriations Acts. However, the Impoundment Control Act does allow the President to pause programs and request that Congress either ratify or reject the request within 45 days.

The Administration claims that this pause is not an impoundment implicated by that law, but even if a court decides it is, we think it possible that the court will allow for some pause given the law allows the President to make a request to Congress. Accordingly, we would recommend that tribes relying on incoming federal funding create contingency plans for its operations for at least 60 days if the impoundment process plays out.

Strategies Under Consideration by Tribes and Tribal Entities

There have been various meetings and discussions among Tribal leaders and Tribal advocates throughout the day, and those discussions will continue throughout the week. United Southern and Eastern Tribes (USET) met to consider political and legal strategies. Among the points discussed were the following:

- The memo/OMB guidance does not align with experience on the ground.
 - It does not appear that Tribes or Tribal programs are specifically targeted for providing Indian preference—the OMB list seems to include programs to examine, not necessarily freeze.
 - The OMB guidance limits the freeze to programs related to specific EOs.
 - But Tribes report issues with eLOCCS, EzFed, ASAP, PMS, Head Start, CCDF, DOJ, IHS, DOE, FVPSA, negotiations and grant meetings.

- The Administration seems to be trying to distinguish or carve out federal funding that flows “to individuals” (like SNAP, Medicare, etc.) – but it is unclear what this means, especially when funding flows through a state or Tribe.
- This pause is just the beginning – outcomes after agency assessment, OMB review, etc., are unclear.
- There was discussion of potential for litigation, with the point emphasized that Trust and treaty obligations cannot become collateral damage – Tribal interests will be implicated in litigation surrounding this issue and Tribes need to have a voice in that litigation.

We note that if at some point Tribes were to consider litigation, the lawsuit brought by the States would likely be the model of action brought (impacts to governments dependent on such funding), with the addition of a focus on Treaty rights and the trust responsibility as the basis for the provision of much of the federal funding at issue.

In the meantime, we think that letters from Tribal leaders to their Congressional Delegation (particularly tribes in Republican states and districts) and to potential allies in the Administration (such as Secretary of Interior nominee Doug Burgum and Secretary of Housing and Urban Development nominee Scott Turner) could be useful. The letters could focus on the following points:

- Tribes depend on federal funding heavily, and such funding is one of the ways the United States carries out its trust and treaty responsibilities;
- Tribes, unlike states, do not have the tax revenue base to be able to withstand federal funding freezes;
- Tribal programs are distinct from DEI programs because Tribes are political entities and have a political relationship with the United States; and
- Tribal programs should be cleared by OMB as quickly as possible, and congressional outreach on that front is urgently needed.

Finally, if funds become available again based on the TRO, we note that such availability may only be temporary. We are advising our clients to draw down the maximum funding allowed for operations (different agencies have different requirements) if and when funding is available, in order to be able to tide over during any additional pause.

Senate Committee on Indian Affairs Request for Information

At the end of the day on January 28, Majority staff of the Senate Committee on Indian Affairs informed tribes and tribal entities that the Committee would collect information on how the funding freeze was affecting them. We reproduce the message in full below:

On behalf of the Senate Committee on Indian Affairs, we are gathering input from Native leaders on the impact of the federal funding freeze on Tribes and Native peoples. Please feel free to share this with your networks.

We are hearing reports that the federal funding freeze is impacting access to portals and services in Native communities. The White House Office of Management and Budget memo is linked here, <https://www.documentcloud.org/documents/25506191-omb-memo-1-27/>

The Senate Committee on Indian Affairs is committed to tracking how any pause on federal funding is impacting Native communities. If your community is affected, please share your experiences and concerns by contacting us at oversight@indian.senate.gov.

Your name/contact information and response will be kept confidential. Please include in your response the name of the agency and the program(s) affected. Your input is vital as we work to uphold the federal trust responsibility and support the well-being of Native communities.

Here is a link to the social media post,

<https://x.com/IndianCommittee/status/1884385157114626516>.

Funding Impact on Tribal Nations

Many Tribal programs are named in the list of those subject to review for adherence to President Trump's priorities. In addition, tribes may benefit from programs not listed here. We encourage you to review the enclosed spreadsheet for any specific programs of interest. While all 2,600 programs, including those listed in an attachment to this report. Please reach out if you have any questions on specific programs. The following chart contains a list of the programs that involve funding relied upon by Tribes.

Conclusion

If you have any questions or would like additional information on any of the issues raised in this report, please do not hesitate to contact Ed Clay Goodman at egoodman@hobbsstrauss.com or by phone at (503) 242-1745.