



1899 L Street, NW, Suite 1200  
Washington, DC 20036

T 202.822.8282  
F 202.296.8834

HOBBSSTRAUS.COM

## MEMORANDUM

January 29, 2025

TO: TRIBAL HOUSING CLIENTS

FROM: Ed Clay Goodman  
HOBBS STRAUS DEAN & WALKER, LLP

RE: *Trump Administration Pauses Federal Financial Assistance – Updates*

---

As we have previously reported, on January 27, 2025, Matthew J. Vaeth, Acting Director of the Office of Management and Budget (OMB), issued M-25-13, 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.” 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, woke gender ideology, and the green new deal.” *Id.* ¶ 16.

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 the morning of January 28, 2025, long before the 5:00 PM deadline, and 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 22 states and the District of Columbia – were filed in federal court to challenge the pause. In one of those cases, the judge partially blocked the funding pause through at least February 3, 2025.<sup>1</sup> In the other, the judge is expected to issue an order by the end of the week blocking the funding pause for a longer period of time. However, prior to the hearing in the second case, Acting OMB Director Vaeth rescinded OMB M-25-13, which initiated the funding pause.

Despite some ongoing lack of clarity, *we believe the rescission essentially returns everything to the status quo prior to when OMB M-25-13 was issued.* Many programs that Tribal Nations benefit from will still be subject to review, however, especially those that may be implicated by executive orders related to clean energy and DEI.

As immediate steps, and as further addressed below, we continue to recommend that tribes and tribal programs seek to draw down federal funds as soon as possible, using the delay

---

<sup>1</sup> AP News, Federal judge temporarily blocks Trump administration freeze on federal grants and loans, <https://apnews.com/article/donald-trump-pause-federal-grants-aid-f9948b9996c0ca971f0065fac85737ce>.

until February 3 to access funding portals. *We also think that a funding delay is possible despite any court-ordered stay, and recommend that recipients of funding prepare contingency plans for programs that rely on federal funding (and for which tribes do not already have funding) for at least 60 days.*

### ***Rescission of OMB M-25-13***

On January 29, 2025, Acting OMB Director Vaeth issued OMB Memorandum M-25-14, titled “Rescission of M-25-13,” which states in full:

OMB Memorandum M-25-13 is rescinded. If you have questions about implementing the President’s Executive Orders, please contact your agency General Counsel.

White House Press Secretary Karoline Leavitt commented on the rescission in an emailed statement, saying:

In light of the injunction, OMB has rescinded the memo to end any confusion on federal policy created by the court ruling and the dishonest media coverage. The executive orders issued by the president on funding reviews remain in full force and effect and will be rigorously implemented by all agencies and departments. This action should effectively end the court case and allow the government to focus on enforcing the president’s orders on controlling federal spending. In the coming weeks and months, more executive action will continue to end the egregious waste of federal funding.

Shortly after this, Ms. Leavitt posted the following on X (formerly Twitter):

This is NOT a rescission of the federal funding freeze.  
It is simply a rescission of OMB M-25-13.  
Why? To end any confusion created by the court’s injunction.  
The President’s EO’s on federal funding remain in full force and effect, and will be rigorously implemented.<sup>2</sup>

Despite some ongoing lack of clarity, we believe the rescission essentially rolls the clock back to the status quo prior to when the OMB M-25-13 was first issued.

As noted previously, the OMB guidance that came out after OMB M-25-13 was issued did not state that programs that are supposed to be exempted from the pause will be free from further review. While the Trump Administration 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 or Indian preference as a “DEI” policy or not.

---

<sup>2</sup> <https://x.com/PressSec/status/1884672871944901034>.

Accordingly, unless and until there is further guidance, tribes and tribal programs will need to wait to see what determinations agencies make about tribal programs.

### *Updates on Litigation Challenging the OMB Memo*

As previously reported, two lawsuits have been filed broadly challenging the funding pause. The first was filed in the federal district court for the District of Columbia by a coalition of non-profits and small businesses. 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 outside 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 on January 28, the Court granted an "administrative stay" with regard to the portion of OMB M-25-13 pausing funding. The administrative stay will be in place until a full hearing on the motion for preliminary injunction is held on Monday, February 3, 2025. In granting the administrative stay, 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 on, January 28, just after the TRO 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 the memo 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 that 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.

After a hearing in the Rhode Island District Court on January 29 afternoon, Judge McConnell indicated he was inclined to grant the states' requested TRO despite OMB's rescission of its memo earlier that day. The states argued that while OMB M-25-13 had been

rescinded, the underlying policy remained and the harm was still being felt. They cited Press Secretary Leavitt's comments and social media post (discussed above). The states noted that some funding is still frozen and the status seems to change minute-by-minute. They feel that cannot currently rely on federal funding, especially given inconsistent guidance from the Administration. The federal government responded that the subject of the TRO was OMB M-25-13, which has been withdrawn. Judge McConnell said he was inclined to issue a TRO, but was not sure how it should read now that OMB M-25-13 has been rescinded. He asked the states to submit a proposed order, after which the federal government will have 24 hours to review and respond. The court set no further deadlines.

### *Further Strategies Under Consideration by Tribes and Tribal Entities*

Various meetings and discussions among Tribal leaders and Tribal advocates continued into January 29, 2025. The Tribal In-House Counsel Association (TICA) met to consider political and legal strategies. Among the points discussed were the following:

- Pending issues: tribal programs could be targets of “green new deal” or DEI executive orders.
  - Clean energy programs are endangered.
  - It is not clear yet how “DEI” will be interpreted.
- A national organization or workgroup to take the lead on coordinating response efforts to this and other policies likely to come from the Administration will be needed.
  - TICA, NCUIH, NIEA, and others were mentioned, but no decisions were made.
- Tribes should continue documenting harms and potential harms.
  - Education will be important – what are these funds, how do tribes use them, what are the impacts.
  - TICA and others, such as the Senate Committee on Indian Affairs (discussed below), are gathering this information.
- Tribes should engage with their congressional delegations and contacts in the Administration.
  - Documentation helps lay base for arguing tribal programs should be exempt from any funding freeze.
- Litigation should be seen as a last resort.
  - Information-gathering will be helpful if litigation needs to take shape.
  - Discussions are happening regarding potential causes of action, strategy, etc.

The Coalition of Large Tribes (COLT) also issued an emergency resolution on January 29, Resolution #01-2025, titled “Emergency resolution of COLT support for tribal exemption from any federal funding freeze or reevaluation of services to tribal governments and tribal citizens.” The resolution notes the chronic underfunding of tribal programs, tribes’ reliance on federal funding, and the fact that “Tribal receipt of Federal monies is rooted in our government-to-government relationships with the United States memorialized in our Treaties and enshrined in the Trust responsibility.” Among other things, the resolution called for immediate restoration of any frozen tribal funds, a broad tribal exemption from any funding freeze, and a presumption by OMB that funding for tribal governments or entities serving tribal citizens is a legitimate expense that need not be subject to any further review.

In the meantime, we continue to 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***

As we reported yesterday, 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 wanted to reproduce the relevant part of message again for your reference and use. We advise that you provide comments to the Committee regarding the impacts that the delay has had, as well as report on any ongoing inability to obtain funds:

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](mailto: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.

### ***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](mailto:egoodman@hobbsstrauss.com) or by phone at (503) 242-1745.