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MEMORANDUM

February 28, 2025

TO: TRIBAL HOUSING CLIENTS

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

RE: ***Preliminary Injunction Granted in Litigation Challenging the OMB
Memo: Temporary Pause on Financial Assistance Programs.***

As discussed in our update on February 21, the plaintiffs in both the Nonprofits case in the U.S. District Court for the District of Columbia ("D.D.C.") and in the States case in the District for Rhode Island ("D.R.I.") filed motions for preliminary injunctions to prohibit the federal government from enforcing or otherwise carrying out the funding pause on open awards pursuant to the January 27, 2025, OMB Memorandum M-25-13 ("OMB memo") during the pendency of the cases, and the courts held hearings on the respective motions at the end of last week.

Since then, on February 25, the D.D.C. issued a memorandum opinion and order granting the Plaintiff Nonprofits' motion and issuing a preliminary injunction. Echoing much of her analysis from her earlier opinion considering a temporary restraining order, Judge AliKahn found that the Plaintiff Nonprofits have sufficiently alleged standing to bring their case, noting that the Plaintiffs' evidence submitted to date has demonstrated that even a temporary pause in funding would have serious, potentially fatal, consequences for Plaintiffs' member organizations that rely on regular and reliable drawdowns from open federal awards to sustain operations and provide critical services. Judge AliKahn was not swayed by Defendants' attempts to redirect the court's attention away from the OMB memo as the source of the initial widespread federal funding freeze and instead attribute pauses in funding to individual agency decision making. In her view, the factual record and a logical evaluation of the chain of events that followed the issuance of the OMB memo clearly indicated a causal connection between the OMB memo and the subsequent widespread freeze.

Moreover, Judge AliKahn rejected Defendants' arguments that the issue of injunctive relief is moot based on the rescission of the OMB memo and the fact that much—although, significantly, not all—of the funding that was paused in the initial aftermath of the memo's issuance has since been resumed. She emphasized that while the OMB memo itself may have technically been rescinded, the policy of a blanket freeze it espoused nevertheless persisted, as evidenced by the Administration's actions and a

statement to that effect by White House Press Secretary Karoline Leavitt following the rescission. She concluded that the threat of a reinstitution of such a freeze remains without a court order in place to prevent such an occurrence.

In evaluating the four factors for preliminary injunctive relief—whether the Plaintiffs can show (1) a substantial likelihood of success on the merits of their claims, (2) that they would suffer irreparable injury if the injunction were not granted, (3) that an injunction would not substantially injure other interested parties, and (4) that the public interest would be furthered by an injunction—Judge AliKahn found that the Plaintiff Nonprofits' are likely to succeed on the merits of their claims that the OMB memo was arbitrary and capricious and issued in excess of OMB's statutory authority. She found that they may also succeed on the merits of their claim that the OMB Memo unconstitutionally conditions the Plaintiffs' member organizations' continued receipt of federal funds under their open awards in violation of the First Amendment.

In her discussion of Plaintiffs' likelihood of success on the merits of their claims, Judge AliKahn did not mince words in conveying her view that the OMB memo—by its own plain terms requiring that "all federal agencies '*must temporarily pause* all activities related to [the] obligation or disbursement of all Federal financial assistance'"—amounted to a "clear directive to implement a blanket pause" of about \$3 trillion in federal funds without any individualized assessment of specific grant terms or relevant statutory authority.

In issuing a preliminary injunction, Judge AliKahn ordered, among other things, that:

Defendants are enjoined from implementing, giving effect to, or reinstating 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.

She also required the Defendants to provide written notice of the preliminary injunction to all agencies to which the OMB memo was addressed and instruct those agencies that they, similarly, "may not take any steps to implement, give effect to, or reinstate under a different name" the directives in the OMB memo and must "continue releasing any disbursements on open awards that were paused due to" the memo.

A joint status report from the parties proposing next steps in the proceeding is due to the court on March 4.

Conclusion

If you have questions or would like additional information, please do not hesitate to contact me at egoodman@hobbsstrauss.com or by phone at (503) 242-1745.