



215 SW Washington Street, Suite 200  
Portland, OR 97204

T 503.242.1745  
F 503.242.1072

HOBBSSTRAUS.COM

## MEMORANDUM

February 4, 2025

TO: TRIBAL HOUSING CLIENTS

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

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

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On January 27, 2025, Matthew J. Vaeth, Acting Director of the Office of Management and Budget (OMB), issued Memorandum M-25-13 (“OMB memo”), a memorandum 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.” The OMB memo 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 at 5:00 P.M. EST on January 28, 2025. However, many federal programs serving Tribes shut down access to their funding portals that morning, long before the 5:00 P.M. deadline, and Tribal programs were unable to draw down funds throughout the day. On January 29, 2025, Acting OMB Director Vaeth rescinded the OMB memo that initiated the funding pause. Despite this rescission, temporary restraining orders (TROs) have now been issued in two federal lawsuits challenging the funding pause—one by a coalition of non-profits and small businesses, and the other by a coalition of 22 states and the District of Columbia.<sup>1</sup> Ongoing funding disruptions and mixed messaging from the Trump Administration led both courts to find that the funding pause policy may still be in place, with or without the OMB memo itself.

*We believe the rescission, combined with the court orders, has essentially returned everything to the status quo prior to when the first OMB memo was issued—for now.* Many programs benefitting Tribal Nations will still be subject to review, however, especially those that may be implicated by executive orders related to clean energy, environmental justice, and DEI (diversity, equity, and inclusion).

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<sup>1</sup> *Nat’l Council of Nonprofits v. Off. of Mgmt. & Budget*, No. 1:25-cv-00239 (D.D.C. filed Jan. 28, 2025); *New York v. Trump*, No. 1:25-cv-00039 (D.R.I. filed Jan. 28, 2025).

As immediate next 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. *We also believe funding delays are possible despite the court orders, and recommend that federal funding recipients 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 Memorandum M-25-13***

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

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 [rescission] 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 the OMB memo.  
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>

As noted previously, the OMB guidance did not state that any programs, including those 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 funding priorities, many of the terms used in those orders, such as “DEI,” “DEIA,” “environmental justice,” “equity,” and “social engineering policies,” have no specific definition. We do not know if the Administration would consider a Tribal program to be a “DEI” policy or not. 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***

Two lawsuits have been filed broadly challenging the funding pause. The first was filed in the U.S. District Court for the District of Columbia by a coalition of non-profits and small

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

businesses, led by the 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 the OMB memo on the grounds that it was arbitrary and capricious agency action, contrary to the First Amendment of the U.S. Constitution, and outside OMB’s statutory authority.

Plaintiffs asked the court to declare the OMB memo unlawful and unconstitutional, and to issue a TRO, preliminary injunction, and permanent injunction barring the pause from taking effect. The court held an emergency hearing on the TRO motion and, just before 5:00 P.M. EST on January 28, granted an administrative stay with regard to the portion of the memo pausing funding.

Also on January 28, 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 U.S. 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 Acting OMB Director Vaeth, this suit also named as defendants President Trump, various federal agencies, and the heads of those agencies. The suit challenged the OMB memo as unlawful under the Administrative Procedure Act, raising additional claims that it violated various constitutional provisions such as: separation of powers, the Spending Clause, and the Presentment, Appropriations, and Take Care Clauses—all of which, plaintiffs argue, place authority for determining how to appropriate and expend funds with Congress, not the Executive Branch.

Unlike the first suit, the States’ litigation focused on the impact to governments that would be deprived of federal funding under the OMB memo (a position similar to that in which Tribes find themselves). From the introduction to the complaint:

[The OMB memo] 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.

The court held a TRO hearing on January 29. While the federal defendants argued the case was moot now that the OMB memo had been rescinded, the States presented evidence to the contrary, including Press Secretary Leavitt’s statements and continued funding interruptions and notices from federal agencies stating they were working to implement the policies of the OMB memo and related executive orders. On January 31, Chief Judge John J. McConnell, Jr., found

“that the policies in [the OMB memo] that the States challenge here are still in full force and effect” and granted a TRO (the “McConnell TRO”), which provided that the federal defendants “shall not”:

- “[P]ause, freeze, impede, block, cancel, or terminate Defendants’ compliance with awards and obligations to provide federal financial assistance to the States” or “impede the States’ access to such awards and obligations, *except on the basis of the applicable authorizing statutes, regulations, and terms*” (emphasis added);
- “If Defendants engage in the ‘identification and review’ of federal assistance programs, as identified in [the OMB memo], . . . affect [sic] a pause freeze, impediment, block, cancellation, or termination of Defendants’ compliance with such awards and obligations, *except on the basis of the applicable authorizing statutes, regulations, and terms*” (emphasis added); or
- “[R]eissu[e], adopt[], implement[], or otherwise giv[e] effect to [the OMB memo] 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” (referring to Press Secretary Leavitt’s statement on X, discussed above).

The McConnell TRO also ordered defendants to “comply with all notice and procedural requirements in the award, agreement, or other instrument relating to decisions to stop, delay, or otherwise withhold federal financial assistance programs,” and to “provide written notice of this Order to all Defendants and agencies and their employees, contractors, and grantees by Monday, February 3, 2025, at 9 a.m.” The McConnell TRO is in effect “until further Order of this Court.”

On February 3, 2025, Judge Loren L. AliKhan issued a similar TRO (the “AliKhan TRO”) in the non-profits’ case filed in the D.C. District Court. Under the AliKhan TRO, OMB and Acting OMB Director Vaeth:

- “[A]re enjoined from implementing, giving effect to, or reinstating under a different name the directives in [the OMB memo] with respect to the disbursement of Federal funds under all open awards”;
- “[M]ust provide written notice of the court’s [TRO] to all agencies to which [the OMB memo] was addressed”;
- “[S]hall instruct those agencies that they may not take any steps to implement, give effect to, or reinstate under a different name the directives in [the OMB memo] with respect to the disbursement of Federal Funds under all open awards”; and
- “[S]hall also instruct those agencies to release any disbursements on open awards that were paused due to [the OMB memo].”

The defendants must also file a report “apprising the court of the status of its [sic] compliance with this Order” by Friday, February 7, 2025.

Between the McConnell and AliKhan TROs, the relief now in place is fairly extensive. Under both TROs, OMB and federal agencies cannot implement or reinstate the OMB memo’s

policies with respect to a funding freeze, and this applies to “all open awards,” per the AliKhan TRO—not just those involving the specific parties to each case. The AliKhan TRO also seeks to provide retroactive relief by requiring OMB to instruct agencies to release any payments that have been paused. However, the President’s executive orders are still in place and the McConnell TRO specifically left some discretion for federal agencies to still pause, block, or cancel federal funding based on “applicable authorizing statutes, regulations, and terms.” Additionally, the degree of ambiguity, including undefined terms used in the OMB memo, executive orders, and related agency communications, has left significant room for potential interpretation. It could be possible for an agency to argue that certain disbursements on open awards were paused not due to the OMB memo, for example, but due to an underlying executive order or some other rationale. It will be important to see what the government’s notice of the AliKhan TRO will contain, as the McConnell TRO notice (discussed below) advised agency compliance beyond the precise terms of the court’s order.

*Next steps in litigation.* In the States’ case in the Rhode Island District Court, the States’ preliminary injunction motion is due on or before Friday, February 7, 2025, with the federal defendants’ response due by Wednesday, February 12, and any reply due by Friday, February 14, 2025. A hearing on the motion—not yet scheduled—will follow. In the non-profits’ case in the D.C. District Court, the parties must propose a preliminary injunction briefing schedule by Friday, February 7, 2025.

### ***DOJ Notice of Court Order Sent to Agencies and Grant Recipients***

Pursuant to the McConnell TRO, the Department of Justice (DOJ) sent a Notice of Court Order (“DOJ Notice”) to all defendant agencies to disseminate to their employees, contractors, and grantees. Notably, the DOJ Notice takes a broad interpretation of the terms of the McConnell TRO. It makes clear that, beyond the OMB memo, federal agencies also cannot pause, block, or cancel awards “on the basis of the President’s recently issued Executive Orders.” Additionally, the DOJ Notice extends this prohibition “to all awards or obligations—not just those involving the Plaintiff States” and “to future assistance (not just current or existing awards or obligations).” Further, “[o]ut of an abundance of caution,” DOJ’s compliance guidance extends to “all federal agencies (even those not named as defendants in the case).”

The DOJ Notice emphasizes, however, that “[a]gencies may exercise their own authority to pause awards or obligations, provided agencies do so purely based on their own discretion—not as a result of the OMB Memo or the President’s Executive Orders—and provided the pause complies with all notice and procedural requirements in the award, agreement, or other instrument relating to such a pause.” We have not yet seen how agencies will comply with the DOJ Notice, particularly non-defendant agencies, but this emphasis continues the trend of mixed messaging from the Administration. It is possible that agencies may seek to pause federal program funding under other, non-OMB memo authorities to align their budgets as much as possible with the President’s financial priorities while litigation is ongoing.

A new or amended DOJ Notice is expected in the coming days to implement compliance with the AliKhan TRO issued on February 3, 2025. While the AliKhan TRO does not expressly provide any carve-out for agencies’ discretion to pause, block, or cancel funding, it is unclear

whether this will make a difference in compliance terms. We do expect a new compliance term instructing agencies to disburse any payments that were paused or delayed due to the OMB memo, but it will be important to analyze the language used to understand the scope and specificity of that compliance.

***Agency Notices to Grant Recipients Regarding Executive Order Compliance***

We are aware that Tribal grant recipients have been receiving notices from federal agencies regarding implementation of President Trump's recent executive orders involving DEI and gender. Specifically, we are aware of notices from the Centers for Disease Control and Prevention (CDC) providing the following:

To implement Executive Orders entitled *Ending Radical and Wasteful Government DEI Programs and Preferencing* and *Initial Rescissions of Harmful Executive Orders and Action*, you must immediately terminate, to the maximum extent, all programs, personnel, activities, or contracts promoting "diversity, equity, and inclusion" (DEI) at every level and activity, regardless of your location or the citizenship of employees or contractors, that are supported with funds from this award. Any vestige, remnant, or re-named piece of any DEI programs funded by the U.S. government under this award are immediately, completely, and permanently terminated.

No additional costs must be incurred that would be used to support any DEI programs, personnel, or activities.

And:

To implement the Executive Order entitled *Defending Women From Gender Ideology Extremism And Restoring Biological Truth To The Federal Government* (*Defending Women From Gender Ideology Extremism And Restoring Biological Truth To The Federal Government – The White House*), and in accordance with Office of Personnel Management's Initial Guidance (Memorandum to Heads and Acting Heads of Departments and Agencies: Initial Guidance Regarding President Trump's Executive Order Defending Women), you must immediately terminate, to the maximum extent, all programs, personnel, activities, or contracts promoting or inculcating gender ideology at every level and activity, regardless of your location or the citizenship of employees or contractors, that are supported with funds from this award. Any vestige, remnant, or re-named piece of any gender ideology programs funded by the U.S. government under this award are immediately, completely, and permanently terminated.

No additional costs must be incurred that would be used to support any gender ideology programs, personnel, or activities.

It seems as though these notices were transmitted prior to issuance of the McConnell TRO on January 31, so their current force and effect is unclear given the subsequent DOJ Notice



distributed to federal agencies and the new AliKhan TRO issued on February 3, 2025. On one hand, notices like these from the CDC would seem to effectuate a pause, freeze, block, or termination of federal awards and obligations under existing programs, which could violate both TROs. On the other hand, however, the pause, freeze, block, or termination is not based on any stated adherence to OMB guidance, but on efforts to implement specified executive orders. Yet, the DOJ Notice interpreting the McConnell TRO seems to be broad enough to encompass funding freezes of this kind. Thus it is likely that notices like these from the CDC are unenforceable for the time being, while the TROs and DOJ guidance remain in place.

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

Indian Country continues to mobilize and organize as issues mount in the new Administration. We have already reported on meetings and efforts arranged by the United South and Eastern Tribes Sovereignty Protection Fund (USET SPF), Tribal In-House Counsel Association (TICA), Coalition of Large Tribes (COLT), and others. An inter-organizational workgroup of individuals has been formed to operate as a response team and task force to develop briefing papers, talking points, and other materials on a rolling basis. Recent actions and developments are summarized below.

The National Indian Health Board (NIHB) issued a statement on January 30, 2025, in response to President Trump's executive orders and the OMB memo affecting federal funding, urging the Administration "to ensure that Tribal health programs remain fully funded and operational." NIHB has developed brief healthcare-related [talking points](#) that highlight the basis for the government's trust and treaty obligations and the on-the-ground impacts of a funding freeze on the Indian health system. NIHB is also [gathering stories, feedback, and information](#) from Tribal leaders and I/T/U health care professionals about impacts experienced as a result of the funding freeze, hiring freeze, or other executive orders or policies.

On February 2, 2025, 23 Tribal organizations sent a [joint letter](#) to President Trump, Congressional leaders, and Secretary of the Interior Doug Burgum regarding the status of Tribal Nations as political entities in the implementation of the President's DEI and environmental justice (EJ) executive orders. The letter describes the unique political status of Tribes to explain why the President's executive orders limiting DEI and EJ initiatives do not apply to Tribal programs. The letter calls on the Trump Administration to: (1) ensure that funding to Tribal programs is not impacted by the implementation of the President's DEI and EJ executive orders; (2) continue to consult with Tribal Nations on a government-to-government basis; (3) avoid burdensome reporting processes; (4) maintain the federal workforce at a level that continues to fulfill the government's trust responsibility and treaty obligations; and (5) utilize the Tribal offices within each agency. The letter closes with an invitation for representatives of the Administration and members of Congress to engage with Tribal leaders at the NCAI Executive Council Winter Session in Washington, D.C. from February 10–13, 2025. NCAI played a major role in organizing the development of this letter, which will be circulated for another round of signatures this week. Both Tribal organizations and individual Tribes will be invited to sign on.

On February 3, 2025, NCAI held a Tribal leaders call to address recent developments regarding the federal funding freeze and next steps in organizing Tribal advocacy. NCAI

President Mark Macarro, Executive Director Larry Wright, Jr., and General Counsel/Chief of Staff Geoffrey Blackwell opened and moderated the conversation, during which many Tribal leaders and organizers voiced their concerns, ideas, and experiences regarding the first two weeks of the Trump Administration. There was discussion of the Tribal organization letter (addressed above), with emphasis on the need to compel the Administration to understand that federal Tribal programs are not racial preference programs and are separate and distinct from DEI or EJ programs. Speakers also urged multi-pronged approaches, focusing on using every tool, relationship, and avenue available while also preparing litigation strategies in case something should go wrong. Several leaders, including some elders, noted the unprecedented nature of recent events, which may call for unprecedented action in response. For a number of people on the call, the depth of collaboration among Tribes and Tribal organizations at this moment harkened back to the early days of the COVID-19 pandemic, and they urged Indian Country to promote a message of unity. Some on the call reported continued difficulty accessing funding portals (particularly the HHS Payment Management System) or receiving drawdown funds (including from TANF, SAMHSA, and other programs and agencies).

Mr. Wright said NCAI intends to hold these calls regularly with Tribal leadership in order to be able to gather and respond to ideas and frustrations in real time. He noted that the NCAI Executive Council Winter Session in Washington, D.C. next week will be a critical time for elevating a unified message on the Hill, as will appropriations time at the end of the month. Mr. Blackwell said that talking points are being developed for Tribal leaders. Mr. Wright also acknowledged that funding issues may impact travel plans for attendees. He said NCAI is working to implement livestreams to allow for virtual attendance, and they are also adjusting the agenda to account for more input and feedback on recent events like the federal funding pause.

Also on February 3, 2025, the National Council of Urban Indian Health (NCUIH) released a [preliminary report](#) regarding the potential impact of federal funding disruptions on Urban Indian Organizations (UIOs), finding that some UIOs would only be able to maintain services for 30 days or less without federal funding. While others would fare better, more than half would be unable to sustain operations beyond six months and more than 60% would face potential staff reductions.

### ***Senate Committee on Indian Affairs Request for Information***

The Senate Committee on Indian Affairs (SCIA) is still collecting information from Tribes and Tribal entities regarding impacts of the funding freeze. On January 29, after the OMB memo was rescinded, SCIA posted the following on X:

Today, the Office of Management and Budget (OMB) rescinded the memo freezing federal program funds. Access to federal funds should resume, but SCIA will continue to monitor developments. Please continue to report concerns and any access issues to [oversight@indian.senate.gov](mailto:oversight@indian.senate.gov).

Some projects may still be impacted by prior executive orders, and we are seeking clarity on what exactly remains in limbo affecting Tribes. Please reach out to our



email in our previous tweet if there are still projects and services impacted by any continued holds on funding.<sup>3</sup>

### ***Conclusion***

We continue to believe it is important to strengthen, build, and maintain relationships with allies in Congress (particularly Republicans) and the Administration (such as newly confirmed Secretary of Interior Doug Burgum and Secretary of Housing and Urban Development Scott Turner). We have drafted a template letter speaking to the issue of DEI and environmental justice, and we are happy to assist with drafting any other communications. 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 Goodman ([egoodman@hobbsstrauss.com](mailto:egoodman@hobbsstrauss.com) or 503-242-1745).

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<sup>3</sup> <https://x.com/IndianCommittee/status/1884668210638643648>.