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MEMORANDUM

February 7, 2025

TO: TRIBAL HOUSING CLIENTS

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

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.”

Since the OMB memo was issued, and even after its rescission on January 29, 2025, Tribes have had inconsistent access to federal funding portals, resulting in delays in drawing down funds for Tribal programs. Reports of some continued problems persist despite the existence of two nationwide temporary restraining orders (TROs) issued by federal courts in Washington, D.C. and Rhode Island.¹ *We believe the rescission, combined with the TROs, has essentially returned everything to the status quo prior to when the OMB memo was issued—for now.*

As discussed below, the Department of the Interior (DOI), at least, has indicated it will not treat Tribal programs as DEI programs. However, many programs benefitting Tribal Nations will still be subject to review by other agencies, especially those that may be implicated by executive orders related to clean energy, environmental justice (EJ), and DEI (diversity, equity, and inclusion). Many terms used in the President’s executive orders, such as “DEI,” “DEIA,” “environmental justice,” and “equity,” have no specific definition, and their interpretation and application may vary by agency. *We continue to recommend that Tribes and Tribal programs seek to draw down federal funds as soon as possible, and that federal funding recipients prepare*

¹ *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).

contingency plans for programs that rely on federal funding (and for which Tribes do not already have funding) for at least 60 days.

DOI Secretarial Order Exempting Tribal Programs from DEI Policies

On January 30, 2025, Acting Secretary of the Interior Walter Cruickshank issued Secretarial Order No. 3416, titled *Ending DEI Programs and Gender Ideology Extremism* (the SO), to implement the President's executive orders (EOs) on DEI and gender (EO 14151, EO 14168). Among other things, the SO terminated all DEI and EJ offices and positions within the Department of the Interior (DOI), required all bureaus and offices to cease all "equity-related activities," and prohibited DOI funds from being used to promote DEI and EJ policies. Most importantly, however, the SO included a limitation stating that:

Sec. 6. Limitations.

Nothing in this Order shall be construed to eliminate, rescind, hinder, impair, or otherwise affect activities that implement legal requirements independent of the rescinded equity-related EOs,² including but not limited to:

...

- d. the statutory authorities, treaty, and/or trust obligations of the Department and its Bureaus/Offices to Tribal nations and the Native Hawaiian Community;**

Sec. Order No. 3416 § 6(d) (emphasis added). In other words, DOI has exempted Tribal programs and obligations from its implementation of the President's DEI and gender EOs. This demonstrates DOI's recognition that Tribal programs are provided on the basis of the federal government's trust and treaty obligations to Tribes, not race-based classifications, and that they constitute legal requirements "independent of the rescinded equity-related EOs."

On February 5, 2025, Senator Lisa Murkowski (R-AK), Chairwoman of the Senate Committee on Indian Affairs, sent a [letter](#) to Acting OMB Director Vaeth applauding SO 3416 for honoring the federal government's treaty and trust obligations and suggesting it "could serve as a model for other federal agencies as they implement these Presidential initiatives." Senator Murkowski urged Acting Director Vaeth to issue a memorandum directing federal agencies to ensure Tribes and Tribal programs are not affected by implementation of the President's EOs, including those related to DEI and EJ. She noted Tribes' concerns about misclassification and emphasized the political, rather than racial, status of Tribal Nations as grounded in the U.S. Constitution, U.S. Supreme Court precedent, treaties, statutes, and historical relationships. Referring to DOI, she said that "[a]t least one federal agency seems to understand this distinct legal and political relationship with Indian Tribes," but noted that "Tribal programs, however, are . . . found throughout nearly all of the federal agencies, which makes this clarification critical as the administration carries out the President's executive orders."

² The provision here refers to [Executive Order 14148](#) *Initial Rescission of Harmful Executive Orders and Actions* (Jan. 20, 2025).

Updates on Litigation Challenging the OMB Memo

Two lawsuits have been filed broadly challenging the funding pause. The first, filed in the U.S. District Court for the District of Columbia by a coalition of non-profits and small businesses (the “Non-profits case”), challenged the OMB memo on the grounds that it violated the Administrative Procedure Act (APA), the First Amendment of the U.S. Constitution, and was outside OMB’s statutory authority. The second, filed in the U.S. District Court for the District of Rhode Island by 22 states and the District of Columbia (the “States case”), also challenged the OMB memo as impermissible under the APA, and raised additional constitutional claims amounting to the authority for determining how to appropriate and expend funds resting with Congress, not the Executive Branch. This suit included President Trump and various federal agencies as defendants, in addition to OMB.

Judge Loren L. AliKhan issued granted an administrative stay in the Non-profits case just before 5:00 P.M. EST on January 28, legally preventing the OMB memo from going into effect. On January 31, Chief Judge John J. McConnell, Jr. granted a TRO (the “McConnell TRO”) in the States case, finding that, despite its rescission, “the policies in [the OMB memo] that the States challenge here are still in full force and effect.” The U.S. Department of Justice (DOJ) issued a notice (“DOJ Notice”) interpreting the McConnell TRO, which included a statement 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.” (Emphasis added.)

On February 3, 2025, Judge AliKhan issued a similar TRO (the “AliKhan TRO”) in the Non-profits case. On February 6, 2025, DOJ filed a copy of an OMB memorandum (dated February 3) notifying federal agencies of the AliKhan TRO and its terms. As expected, the OMB notice included instructions to “release any disbursement on open awards that were paused due to OMB Memorandum M-25-13.” As interpreted by OMB, “‘open awards’ means all forms of Federal financial assistance within the scope of [the OMB memo] ‘that have already been approved and partially disbursed’” and “do[es] not apply to issuance of new awards, or to awards that have not yet been awarded to specific individuals or entities (such as NOFOs).” Additionally, OMB explained that its instructions pursuant to the AliKhan TRO “do not restrict agencies’ compliance with the President’s recently issued Executive Orders, nor do they restrict agencies’ ability to take actions pursuant to their own authorities independent of [the OMB memo].” OMB noted, however, that this “do[es] not eliminate or supersede any compliance obligations” from the McConnell TRO.

Between the McConnell and AliKhan TROs, DOJ Notice, and OMB Instructions, the relief now in place is fairly extensive, though considerable room for confusion, discretion, and interpretation has been preserved. Considered collectively, the following terms seem to be currently in place:

- No federal agency, including OMB, can implement, reinstate, or give effect to the OMB memo’s directives, under any name or title, or the President’s recently issued EOs, with respect to all open awards and future federal funding assistance.

- No federal agency can pause, block, or terminate their compliance with awards or obligations related to federal assistance programs under review due to the OMB memo or the President's recently issued EOs.
- Federal agencies must release any disbursements on all open awards that were already paused due to the OMB memo.
- Federal agencies can still pause, block, or terminate awards or obligations based on their own discretion and applicable authorizing statutes, regulations, and terms (but *not* on the basis of the OMB memo or the President's recently issued EOs).
- In any decision to stop, delay, or otherwise withhold federal funding, federal agencies must comply with all notice and procedural requirements in the related award or obligation.

We have yet to see how agencies will fully comply with these terms, but the emphasis on agencies' discretionary authority continues the trend of mixed messaging from the Administration. Agencies may seek to pause federal program funding under other authorities to align their budgets as much as possible with the President's financial priorities. The extent to which the TROs apply to any specific executive order is also unclear, as the DOJ Notice only refers to "the President's recently issued Executive Orders." Presumably, this extends to at least those executive orders referenced in the OMB memo and corresponding guidance, which would include those related to DEI, gender, and clean energy. However, this does not necessarily reflect the reality in implementation.

Next steps in litigation. The States' preliminary injunction motion is due today, February 7, 2025, with the federal defendants' response due by February 12 and any reply due by February 14. A hearing on the motion—not yet scheduled—will follow. The Non-profits' preliminary injunction motion is due on or before Tuesday, February 11, 2025, with the federal defendants' response due by February 15 and any reply due by February 18. A hearing on the motion will be held on February 20, 2025, at 11 AM EST. The TROs will remain in place until the preliminary injunction motions are decided.

Tribal Organization Updates and Collective Resources

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), National Indian Health Board (NIHB), National Congress of American Indians (NCAI), National Council of Urban Indian Health (NCUIH), and others. An inter-organizational workgroup of individuals called the "worker bees" has 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 "worker bee coalition" workgroup met on February 4, 2025, for a status and strategy update. The group involves representatives from USET SPF, NCAI, NCUIH, the Native American Rights Fund (NARF), the National Indian Education Association (NIEA), and other

Tribal organizations and legal counsel. The goal for the group is to be relatively small and efficient and it is tasked with the legwork of drafting documents and developing ideas assigned by the various represented Tribal organizations, which can then be circulated more publicly for review. The group is currently working on resources including talking points for Tribal leaders to use on the Hill during the NCAI Executive Council Winter Session (Feb. 10–13), and briefing papers on the trust responsibility and Tribal government success stories. These are expected to be circulated more broadly by the end of this week. Longer term, the group is developing letters to various agencies and template letters for congressional offices, as well as resources for developing Hill and agency contacts, and is tracking impacts to Tribal programs.

Workgroup members flagged various recent developments, including cost estimate requests related to the Tribal Interior Budget Council (TIBC) consultation in March (suggesting federal representatives may not be able to attend due to new travel expense restrictions, in which case the consultation will have to be virtual); a forthcoming Native Community Development Financial Institutions (CDFIs) survey; and testimony being provided by NIEA, NIHB, NARF, and NCAI before a Senate Committee on Indian Affairs (SCIA) [Oversight Hearing to “Examine Native Communities’ Priorities for the 119th Congress”](#) on February 12, 2025, at 2:30 P.M. EST.

USET SPF held a weekly meeting on February 6, 2025, to discuss current strategy and developments regarding the Administration’s policies. Ongoing difficulties accessing federal funding was a topic of discussion, with reports of mixed experiences depending on the type of funding portal including outages, delays in receipt of funding, and some rejections, at least as applied to expired funding. Inquiries to agencies have generally been met with a message resembling the following: “You are welcome to submit your funding request. We are processing payments in accordance with agency guidance.” No further elaboration is provided.

Public health experts reported that weekly flu data is no longer being circulated by the federal government, and while data is available or has been restored to federal websites, it is often limited compared to before. Some experts said they were looking at data from private companies like Walgreens, and even monitoring Reddit threads online, to try to gather the most recent updates within the community. Policy experts reported that their contacts within the federal government have gone dark—even those built on decades-long relationships—while it has been increasingly difficult to identify who is the appropriate person to contact for a given office or agency. Finally, recent reporting was discussed regarding the Trump Administration’s command to terminate all leases administered through the General Services Administration (GSA).³ This was noted as a concern if it were to have any implications on Section 105(l) leasing.

Useful links for resources and information-gathering:

- NIHB’s healthcare-related [talking points](#).
- NIHB is [gathering stories, feedback, and information](#) from Tribal leaders and organizations serving Indian Country.

³ <https://apnews.com/article/trump-musk-gsa-terminate-office-leases-f8faac5e2038722f705587c8dd21ab26>.

- Tribal organizations' [joint letter](#) to President Trump, Congressional leaders, and Interior Secretary Doug Burgum. Tribes are invited to draw language and direction from this letter in developing their own letters to the Administration and Congress.
- NCUH's [preliminary report](#) regarding Urban Indian Organizations (UIOs).
- SCIA's email address for information collection regarding funding freeze impacts, concerns, and access issues: oversight@indian.senate.gov.
- USET [information collection](#) regarding funding freeze.

Notice of Canceled Tribal Meetings

On February 5, 2025, the DOJ published a [notice](#) canceling the February 10, 2025 meeting of the Task Force on Research on Violence Against American Indian and Alaska Native Women. The notice says the meeting will be rescheduled, but does not provide a new meeting date or any additional information. Sherriann Moore (Deputy Director, Tribal Affairs Division, Office on Violence Against Women, U.S. DOJ) is listed as the relevant contact. She can be contacted at 202-616-0039 or at ovw.tribalaffairs@usdoj.gov.

The Treasury Tribal Advisory Committee (TTAC) meeting was also canceled and has reportedly been rescheduled to May 22, 2025, though this date has not yet been released to the public. Check [this link](#) for updates, or email tribal.consult@treasury.gov. We have been told the meeting was canceled because the Trump Administration wants to organize its own notice of the meeting rather than act upon a notice organized by the previous Administration.

Federal Environmental Offices and Environmental Justice Programs Are Being Targeted

It has been reported that the Administration is beginning to dismantle environmental policies and offices within DOJ. On February 5, 2025, U.S. Attorney General Pam Bondi sent a memorandum titled *Rescinding "Environmental Justice" Memoranda* to all DOJ employees, rescinding the May 5, 2022 memo titled *Comprehensive Environmental Justice Enforcement Strategy*, and "any other Attorney General memoranda, guidance, or similar directive that implement the prior administration's 'environmental justice' agenda." She also directed the heads of all bureau components and U.S. Attorney's Offices to "rescind immediately any memoranda, guidance, or similar directive applicable to their component office" by February 7, 2025 (today). The Office of Environmental Justice within DOJ's Energy and Natural Resources Division (ENRD) has reportedly been eliminated. All pages linking to the Office of Environmental Justice have been removed from the DOJ website. ENRD employees are also apparently being targeted for downsizing, and all new-hire job offers have been revoked.

It has been further reported that on February 5, 2025, Trump Administration officials notified staff members at the Environmental Protection Agency (EPA) that they planned to close the Office of Environmental Justice and External Civil Rights and place those employees on administrative leave. This pivot away from environmental justice will be felt across many "disadvantaged communities" that disproportionately experience the brunt of climate change, and that received approximately 40% of federal environmental funding under the Biden Administration. EPA removed from its website an online screening tool it used to identify

environmental justice communities and provide data about cancer risk and pollution exposure in identified communities.

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 the 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 a briefing paper regarding the political nature of Tribal programs, 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 Clay Goodman at egoodman@hobbsstrauss.com or by phone at (503) 242-1745.