

**ALERT**

# Practical Tips for Surviving the New Administration's "Pause" on Federal Contracts and Grants

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January 29, 2025

*NOTE: This alert has been updated to reflect the January 29 rescission of OMB Memo M-25-13.*

The first week of the Trump Administration brought a whirlwind of activity and significant changes across many federal agencies. New Executive Orders (EOs), agency directives, and leadership transitions have sent ripples throughout the federal contracts and grants communities.

On January 27, the Office of Management and Budget issued a memorandum (OMB Memo M-25-13) directing all federal agencies to implement a "temporary pause" on all obligations or disbursements of all federal grant funds and other activities that "may be implicated by" the flurry of EOs issued by the new Administration. The following day, as agencies were beginning to take actions to implement the OMB Memo, a federal district court issued a temporary restraining order barring the Administration from moving forward with the pause through February 3 at 5 p.m.

On January 29, The White House rescinded OMB Memo M-25-13, as announced in OMB Memo M-25-14. The brief rescission memo instructs agencies to consult with their general counsels if they have questions regarding implementation of the President's Executive Orders. Although the rescission memo lifts the blanket stay on fund distributions, we anticipate that agencies will be reviewing all grants and pausing funding of them on a case-by-case basis.

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## Practice Areas

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Federal Grants and Cooperative Agreements  
Government Contractors & Grantees  
Government Contracts

The January 27 OMB directive and the January 29 rescission come on the heels of pauses imposed by several agencies during the first week of the Administration – including USAID and EPA – to suspend or stop work on contracts and grants until they can be reviewed by new agency leadership. Other agencies, such as GSA and HHS, have announced temporary “pauses” on new contract awards, modifications, extensions and new actions or obligations. These directives, which are being driven by new policy priorities of the Trump Administration, have disrupted ongoing projects and created significant uncertainty among contractors, grantees, and recipients of grant funds.

This alert examines the immediate fallout of these recent actions and provides practical tips on how companies can protect their interests if their contracts or grants are affected by agency-imposed pauses.

- ***“Keep calm and carry on” unless and until formally directed otherwise.*** Each day seems to bring new reports of EO s and agency actions to implement the new Administration’s policies, including pauses in awards and contract extensions or modifications. Even if you have heard of news reports of pauses or received emails from agency personnel, however, contractors and grantees should keep in mind that only certain officials (e.g., the Contracting Officer (CO), Agreements Officer (AO) or, in the case of a subcontractor or subawardee, your prime contractor or higher-tier grant holder) are authorized to make changes or provide binding direction. Therefore, contractors and grantees (as well as their subcontractors and subawardees) should continue performing as required by their existing agreements, unless and until formally directed otherwise in writing by an authorized official of the agency (or higher-tier awardee).
- ***Review the terms of your contract or grant.*** Every contract and grant is different, and each agency’s right to “pause” agreements may differ, depending on applicable regulations and the terms of the agreement. For example, procurement contracts may include a number of standard FAR clauses authorizing agencies to “pause” performance, such as stop work (FAR 52.242-15) and suspension of work (FAR 52.242-14) provisions, as well as provisions regarding government delays (FAR 52.242-17). Importantly, these clauses (and non-standard clauses in grants and other types of agreements) may entitle the contractor to an equitable adjustment for any increased costs resulting from the government-imposed work stoppage. If you receive a suspension or stop work order, review the order closely to confirm that it complies with the applicable regulations and the terms of your award, and take steps to ensure that you comply with the government’s direction as well as steps to protect your rights to seek an equitable adjustment as required by the applicable clause(s).
- ***Assess whether your agreement is within the scope of the pause.*** Although reports have suggested that the Administration is pausing all contracts and grants, the actual scope of the pauses may in fact be more limited. For example, the EO on “Unleashing American Energy” directed a pause in “funding appropriated through the Inflation Reduction Act [IRA] or the Infrastructure Investment and Jobs Act [IIJA],” which included funding for a broad array of infrastructure programs. Nonetheless, guidance issued by OMB the very next day (OMB Memo M-25-11) clarified that this pause only applies to funds supporting programs that “may be implicated by the policy established in” the Unleashing American Energy EO, which are generally focused on energy-related issues (e.g., encouraging energy exploration, eliminating EV mandate, safeguarding consumer choice of appliances, etc.) as opposed to other types

of infrastructure. Likewise, guidance issued by OMB regarding the broader direction for agencies to pause other federal grant funds instructed that this broader pause is limited to grant programs that "may implicate" other EO's, such as the EO's related to foreign aid, DEI, "woke gender ideology" and the "green new deal" (OMB Memo M-25-13). Therefore, awardees should review their agreements to assess whether they are actually within the scope of any government-directed pause.

- **Communicate with your customer early and often.** Even if a pause applies to a particular agreement, it may not apply to the entire scope of work, depending on the scope of the pause as well as the scope of the agreement. If you are unsure whether awarded work and current performance is covered by a pause, you should inform, in writing, the CO of your interpretation of permitted and paused work and ask for guidance. Even if guidance is not provided, a record of your interpretation and request for guidance may be beneficial down the road if the pause is long or affects schedule, performance, or costs.
- **Document any continuing or increased costs resulting from a government-imposed stop work, as well as any changes or termination of the work.** A critical question to address immediately upon receiving the stop-work order is what costs may be incurred during the suspension period. Under federal contracts, contractors are generally entitled to an equitable adjustment for costs incurred as a result of the stop-work order. Contractors may also be entitled to an equitable adjustment to any continuing work in the event the government changes or reduces the scope of work (e.g., a deductive change), as well as compensation in the event the government ultimately terminates the work for its convenience (i.e., a termination settlement). The ability to recover such costs under federal grants and cooperative agreements is less clear and can vary depending on the circumstances of the award. For both contracts and grants, upon receiving a stop-work order, companies should immediately engage in dialogue with the CO or AO regarding the continuing costs they are permitted to incur during the stop-work period. In addition, companies should carefully track any additional costs resulting from any government-imposed stop work, as well as any changes or termination of the work, to maximize their chances of recovery.
- **Monitor funding.** If performance continues – but without modifications or extensions – incrementally funded contracts may hit their funding limits or their funding and cost reporting obligations under the Limitation of Funds and Limitation of Costs FAR clauses, FAR 52.232-22 and 52.232-20. Under these clauses, when the funding limitation is reached, and no funding is added, the contractor is expected to stop work, and any performance thereafter is "at risk." Once again, communication is king – provide the requisite notices to the CO, ensure that your subcontractors (or if you are a subcontractor, your prime contractor) are aware of the approaching funding lapse, and take measures to be prepared if funding is not added to the contract when it runs out.
- **Manage options, avoid constructive changes, and watch for releases.** Options must be exercised in strict accordance with their terms and during the option exercise period. If a desired option exercise is approaching, inform the CO. But there is no obligation to do so if you prefer the option to lapse. Ensure also that program personnel heed directions to hew to the performance work statement and avoid succumbing to requests from their government counterparts to perform "more" or differently. These

types of "constructive" changes are the hardest to manage and are unauthorized without CO approval. Finally, when contract modifications and extensions resume, review them for changes and releases and be prepared to push back on the scope or reserve your rights.

### ***Key Takeaways***

The new Administration has been acting at an unprecedented pace, moving quickly to implement its policies through a flurry of EO<sup>s</sup> and other directives, many of which directly implicate federal contractors and grantees. This unprecedented activity has created significant uncertainty among contractors and grantees, who should be careful to monitor these developments and ensure that their rights are protected. Wiley's Government Contracts Practice is continuing to monitor developments from the new Administration and is ready to assist contractors in navigating these changes.

To stay informed on all of the Executive Orders and announcements from the Trump Administration, please visit our dedicated resource center below.

Wiley's Trump Administration Resource Center