

The Federal-Funds Freeze & the Impoundment Control Act

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- Podcast Host: “We’re all very confused”
- Podcast Expert Guest: It “...wouldn’t surprise me ... if the confusion is part of the point....”

When Brookings Institution podcast host Adrianna Pita hooked up her microphone three weeks ago, it was for a topic that was already making headlines and creating havoc around the nation. See [Can the Trump administration freeze federal spending?](#) [Commentary & Podcast] (January 29, 2025).

Just 36 hours earlier, on Monday evening, January 27th, the acting director of the powerful Office of Management and Budget had sent out [OMB Memorandum \(M-25-13\): Temporary Pause of Agency Grant, Loan, and Other Financial Assistance Programs](#) to the heads of each executive-branch department and agency.

It was just Day 8 of the new presidential administration when these high-ranking officials were ordered to take extraordinary action: to immediately – but no later than 5 pm the following day – freeze/pause as much as one-third of the total federal-budget spending. That’s at least \$3 trillion!

However, the two-page directive, labeled an “internal memo,” was leaked to the press that same night. Two sets of plaintiffs and their counsel worked feverishly (and successfully) overnight to pull together federal lawsuits seeking emergency relief as well as a permanent reversal of the “pause.” See our two previous posts: [Federal Funding “Pause”: Five-Alarm-Fire, Doused for Now](#) (February 4, 2025) and [Litigating “Freezing-Funds” Directive From OMB](#) (February 14, 2025).

By Tuesday morning, January 28th, state and local employees, nonprofit organizations, and individuals were encountering locked federal payment portals. This sparked massive confusion and

chaos, disruptions and demands for answers and action. (A few weeks later, these problems have not all been corrected despite two temporary restraining orders now in place.)

Facing anger and blowback, the administration made several frenetic (but botched) attempts at damage control. On that Tuesday, they posted a “clarifying” document that only muddled the water further and did not have the effect of stopping a District of Columbia federal judge from ordering an “administrative stay” just minutes before that 5 pm compliance deadline.

Then, on Wednesday, January 29th, the OMB issued a new document labeled “rescission.” It might have been effective had not the brand-new White House Press Secretary posted to social media shortly afterward that the purported rescission applied *only* to the the two-page document, i.e., Memorandum (M-25-13), but *not* to the underlying policy of freezing federal funds.

It was in the midst of this particular confusion that podcaster Adrianna Pita began her broadcast on whether the Trump administration “... can freeze federal spending.”

Confusion is The Strategy

Ms. Pita introduced her guest expert and explained the purpose of this podcast episode: “With us to help make some sense out of what happened in the last 36 to 48 hours, what this OMB memo is about and the legal, constitutional issues at play is Molly Reynolds [Ph.D], senior fellow in Governance Studies [at the Brookings Institution]. Molly, welcome back.”

“For our listeners,” the host clarified, “we are recording this on Wednesday afternoon at 2 p.m. There keep being lots of changes in this. News that the Trump administration was rescinding this OMB memo just came through to us a little bit ago, followed by a confusing statement from the White House on Twitter that the memo has been rescinded, but the federal funding freeze has not.”

“We’re all very confused. Molly, can you catch us up with what has happened and how wide-reaching was this?”

Dr. Reynolds responded: It wouldn’t “surprise me if the level of confusion that we are experiencing in this moment, that others in Washington and frankly, quite consequentially, folks around the country [are experiencing], ... that the confusion is part of the point....”

[In our February 4th and February 14th posts, we harped on this same point: namely, that chaos and uncertainty are the desired result in the Trump administration’s “Shock-and-Awe 2.0” blitz for the first 100 days. The more distractions and disruptions – coming from multiple directions all at once – the better.]

To support her premise that “confusion” is “a feature, not a bug” of the strategy and action plan, Molly Reynolds reminded listeners that this White House is now firmly populated by true believers in Project 2025, a key tenet of which is smashing the “Administrative State.” She added: What “we’re seeing broadly is the first step or one of a set of first steps in an attempt to try and really dramatically remake the size and scope of the federal government.”

Dr. Reynolds emphasized that the “lynchpin of this particular tactic is a document”; namely, Memorandum (M-25-13). She characterized it as “... quite broad, quite vague, that really, in a lot of

ways basically [seems] to just turn off much of the federal government.” On top of that, administration officials came out and said: “...No, the memo doesn’t apply to X program or it doesn’t actually apply to a Y program, despite the fact that that really wasn’t clear.”

Since then, more than one federal judge has also noted this ambiguity and uncertainty.

The Impoundment Control Act

In the January 29, 2025, podcast, Dr. Reynolds explained why the Impoundment Control Act of 1974 (ICA) looms large in cases like these about whether the president can unilaterally decide how (if at all) to spend funds that Congress has appropriated.

In helpful plain-English style, she discussed the basic history of the ICA which was a response to President Nixon’s position that “he, as the president, did not have to spend certain funds that Congress had appropriated.”

“Congress has what we call the power of the purse. Congress writes appropriations bills, and then the executive branch is responsible for actually effectuating the decisions that Congress has made in those bills, actually sort of pushing the money out the door in various forms, ...”

In “several high-profile cases,” Richard Nixon “decided that he didn’t want his executive branch to make certain kinds of grants for which Congress had appropriated funds,” In 1974, over a presidential veto, Congress passed the Impoundment Control Act. Under that law, if the “... executive branch wants to refuse to spend money that Congress has appropriated, it has to go through certain steps to do so. It can in one set of circumstances defer spending, but it has to tell Congress that it’s doing that and kind of go through a prescribed set of steps. It can also rescind funds, so basically decide not to spend money that Congress appropriated. But again, it has to tell Congress and has to go through a process with Congress. Neither of those steps we’re seeing this OMB memo take.”

Dr. Reynolds added: “There’s sort of a broader, somewhat gray area under which the executive branch can ‘programmatically delay’ the spending of certain funds. But it can’t do that based simply on policy disagreement. So if the executive branch is going to, under the contours of budget law, delay spending funds, there are criteria under which it can do that, and simply disagreeing with Congress on policy grounds is not one of the permissible reasons for doing that.”

In the current federal lawsuits involving OMB Memorandum (M-25-13), both sets of plaintiffs allege separation-of-powers violations, including the Impoundment Control Act of 1974. And – so far – in the favorable rulings on the temporary restraining orders that have since been entered, each district-court judge (in D.C. and in Rhode Island) has ruled it appears to be a viable claim on which the plaintiffs are “likely to succeed on the merits.”

The Impoundment Fight

During the January 29th podcast, Dr. Molly Reynolds, an expert on Congress and the separation-of-powers rules, characterized “what we’ve seen in the past couple of days,” as a “dispute about impoundment power, but it’s also a dispute about other things, about other forms of statutory authority. . . it’s a broader debate about executive power.”

She elaborated: “This is part of an opening play in what could turn into a broader fight over the constitutionality of the [Impoundment Control Act]...”

The newly confirmed (for the second time) director of the OMB, Russell Vought, strongly believes that the ICA is unconstitutional and wants a test case to go to the Supreme Court.

On that Wednesday afternoon three weeks ago, Brookings Institution expert Molly Reynolds predicted: “...[W]e don’t know how disruptive the situation will get because we’re still trying to get our hands around the scope of what’s going on.”

Now, as we’ve passed Day 30 of the new administration, we are still trying to “get our hands” around what may happen.

Conclusion

For an excellent, in-depth, resource for understanding this area of law, see: [A Primer on the Impoundment Control Act](#) (January 28, 2025 1:50 pm EST) Zachary Price, Professor of Law, UCSF, lawfaremedia.org [“Refusals to undertake required spending are already a major theme of Trump’s second term, but the law limits such executive action.”]

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