NONPROFITS: FINANCE

The Preliminary Injunctions Re OMB Memorandum (M-25-13): A Closer Look

03.18.25 | Linda J. Rosenthal, JD

It's been a long eight weeks since Inauguration Day.

The charitable community has been reeling from a continual barrage of "shock and awe" grenades from the White House. Among the most alarming – and nearly catastrophic – was the notorious *OMB Memorandum (M-25-13)*: *Temporary Pause of Agency Grant, Loan, and Other Financial Assistance Programs* [the "Pause Memo"](January 27, 2025).

Just two pages long, the Pause Memo was addressed to the department and agency heads, most of whom were temporary appointees. They were directed to help out with what is fairly described as a purge. "Career and political appointees in the Executive Branch have a duty," these top officials were told, "to align Federal spending and action with the will of the American people as expressed through Presidential priorities."

Each head was ordered to conduct a two-week comprehensive review of all federally funded projects and activities to help evaluate them for ideological purity. "The use of Federal resources to advance Marxist equity, transgenderism, and green new deal social engineering policies is a waste of taxpayer dollars that does not improve the day-to-day lives of those we serve." As examples of *good* public policy, the author of the Pause Memo mentioned several of the 26 blockbuster executive orders announced on January 20th, including: *Ending Radical and Wasteful Government DEI Programs and Preferencing* and *Protecting the American People Against Invasion.*

The first task, though, was critical: Plug the entire money pipeline immediately but by no later than 5 pm next afternoon.

In *Federal Funding "Pause": Five-Alarm-Fire, Doused for Now* (February 4, 2025), we first reported on this important story, focusing on the critical first 48 hours. By the end of these first two days, there were already: (a) two federal lawsuits filed, (b) an administrative stay ordered, and (c) two temporary restraining orders under active consideration – both of which were granted before the weekend.

As Day 8 of the new administration drew to a close, the acting director of the Office of Management and Budget (OMB), Matthew C. Veath, had been dotting the i's and crossing the t's of the Pause Memo. That evening, he transmitted the signed document to the department and agency heads as a "private memo." Quite possibly – (according to a veteran journalist known to have excellent sources) – it was sent out to the addressees without first getting the requested sign-off by Deputy Chief of Staff Stephen Miller.

Whether an approved and perhaps revised version would have been any better than the original is anyone's guess, but the bottom line is that the Pause Memo is a two-page mess: jargon-laden, almost incomprehensibly vague, and internally inconsistent – according to almost everyone who's read it including two federal judges. That's particularly troubling since it was the reason that the normal flow of enormous amounts of federal money was shut off by early the next morning.

Fortunately, the Pause Memo had been either leaked to the press or intercepted by it on that same Monday evening, January 27th. The two sets of plaintiffs and their counsel worked feverishly overnight to draft the excellent lawsuits that were filed the next day – one in the District of Columbia, and the other in the District of Rhode Island.

Subsequent efforts over the next days and weeks to turn the flow of money back on have been slow and difficult. See: *Litigating Freezing-Funds Directive From OMB* (February 14, 2025); *The Federal-Funds Freeze & the Impoundment Control Act* (February 20, 2025); and *The Federal Offensive Against Nonprofits: Navigating Quicksand* (February 25, 2025).

Now, seven weeks later, there are two preliminary injunctions in place:

- *National Council of Nonprofits et al v OMB et al,* D.C. federal court, Case No: 1:36-cv-00239, Document #51, Judge Loren R. AliKhan. See: *Preliminary Injunction Granted Re Freezing-Funds Directive* (February 27, 2025).
- *State of New York et al v. Trump et al,* Rhode Island federal court, Case No: 1:25-cv-00039, Document #161, Chief Judge James J. McDonnell, Jr.; [a coalition of the 23 Democratic state attorneys general as plaintiffs]. See: *Another Preliminary Injunction in OMB Memorandum (M-25-13) Litigation* (March 12, 2025)

So – is that it? Problem solved?

Sadly, no.

Worst-Case Losses Averted

The news scoop on Monday evening, January 27th, as well the rapid-fire responses by the charitable sector and the nation's leading charity regulators helped to thwart the total shutdown of the federal-funding system. But there's a great deal left to do as these two lawsuits are prosecuted

to successful conclusions.

Not all of the frozen money has been restored, and there are new and different tactics rolled out regularly by the administration to freeze federal spending or close down entire agencies. They want to dismantle the "Administrative State." Quoting the opening line of the plaintiffs' brief in a brand-new lawsuit challenging major funding freezes: "From its very first day in office, the Trump administration has engaged in concerted efforts to strangle the flow of federal funding on which Americans of all walks of life rely." *Woonasquatucket River Watershed Council v. Department of Agriculture*, 1-25-cv-00097, (D.R.I. March 13, 2025) Document #1. One of the four named plaintiffs in Woonasquatucket River is the National Council of Nonprofits.

- [***Update, 3/19/25***]: See *Suit Filed To Restore Critical Infrastructure and Investment Funds* (March 19, 2025) *National Council of Nonprofits*

In the short term, the separation-of-powers doctrine in the U.S. Constitution and the federal Administrative Procedures Act (ACA) are important legal shields enabling plaintiffs to win fairly easily in federal court in the legal battles to keep already appropriated federal money flowing.

But there are flashing red lights right now, not least because it seems that the executive branch wants a showdown with the judiciary over court orders.

There is also danger ahead In terms of securing new money for later funding cycles. The compliant Congressional majority seems unwilling to exercise its own formidable constitutional power to block the most extreme plans of the executive branch.

In much the same way that Americans have become armchair criminal-law experts over the past several years, we're all about to become proficient in constitutional and administrative law as well as federal grants-management rules and regulations. For our education in these topics, the parties' briefs and the two federal judges' rulings in the two lawsuits arising out of the Pause Memo are excellent teaching aids.

As promised in our most recent post on this story, let's continue this discussion by taking a close look at the precise language of the preliminary injunctions now in place. They are similar but not identical. The District of Columbia order has nationwide effect; the Rhode Island one does not, although it's effective in 23 American jurisdictions.

Let's work backward chronologically, beginning with the later of the two court orders arising from OMB Memorandum (M-25-13).

Democratic Attorneys General Lawsuit

In *State of New York v. Trump*, 1:25-cv-00039, (D.R.I. Mar 06, 2025), the 45-page Memorandum and Order granting the preliminary injunction is posted online, free of charge, as Document #161. Thess extensive links are courtesy of the superb website Court Listener, operated by the non-profit Free Law Project, and updated several times a day.

Key provisions of the Preliminary Injunction Order dated March 6, 2025, include:

- "The Agency Defendants are enjoined from reissuing, adopting, implementing, givingeffect to, or reinstating under a different name the directives in OMB Memorandum M-25-13 (the "OMB Directive") with respect to the disbursement and transmission of appropriated federal funds to the States under awarded grants, executed contracts, or other executed financial obligations."
- "The Agency Defendants are enjoined from pausing, freezing, blocking, canceling, suspending, terminating, or otherwise impeding the disbursement of appropriated federal funds to the States under awarded grants, executed contracts, or other executed financial obligations based on the OMB Directive, including funding freezes dictated, described, or implied by Executive Orders issued by the President before rescission of the OMB Directive or any other materially similar order, memorandum, directive, policy, or practice under which the federal government imposes or applies a categorical pause or freeze of funding appropriated by Congress. This includes, but is by no means not limited to, Section 7(a) of Executive Order 14154, Unleashing American Energy."

The Defendants are further directed to give written notice of this Order "to all federal departments and agencies to which the OMB Directive was addressed," telling them they "may not take any steps to implement, give effect to, or reinstate under a different name or through other means the directives in the OMB Directive with respect to the disbursement or transmission of appropriated federal funds to the States under awarded grants, executed contracts, or other executed financial obligations."

The Defendants are also ordered to "release and transmit any disbursements to the States on awarded grants, executed contracts, or other executed financial obligations that were paused on the grounds of the OMB Directive and Executive Orders included by reference therein or issued before the rescission of the OMB Directive."

Chief Judge McConnell expressly refused to stay the Order pending any appeal. (Defendants have since filed an appeal.)

Directly related to this March 6th ruling are pleadings and briefs including:

- Plaintiffs' Motion for Preliminary Injunction – Document #67 (February 7, 2025) 75 pp.
- Plaintiffs' Declaration and 127 Exhibits in Support of Motion for P.I. – Document #68
- Defendants' Memorandum in Opposition to Motion for P.I. – Document #113 (February 12, 2025) 75 pp., no exhibits or declarations
- Plaintiffs' Reply to Defendants' Opposition – Document #147 (February 14, 2025) 42 pp.

District of Columbia Lawsuit

In *National Council of Nonprofits et al v OMB et al,* 1:25-cv-00239, (D.D.C. February 25, 2025), the 45-page Memorandum Opinion is Document #51; the Order is Document #52.

Unlike the *New York v. Trump* litigation, this case in the District of Columbia qualified for entry as a nationwide injunction.

Key provisions of the February 25, 2025, Preliminary Injunction Order are:

- "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."
- "Defendants are enjoined from implementing, giving effect to, or reinstating under a different name the unilateral, non-individualized directives in OMB Memorandum -25-13 with respect to the disbursement of Federal funds under all open awards."
- "Defendants must provide written notice of the court's preliminary injunction to all agencies to which OMB Memorandum M-25-13 was addressed. The written notice shall instruct those agencies that they may not take any steps to implement, give effect to, or reinstate 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. It shall also instruct those agencies to continue releasing any disbursements on open awards that were paused due to OMB Memorandum M-25-13."

Directly related to this February 25, 2025, Order are:

- Plaintiffs' Motion for Preliminary Injunction – Document #40 (February 11, 2025) 38 pp.
- Defendants' Memorandum in Opposition to Motion for P.I. – Document #47 (February 14, 2025), 49 pp.
- Plaintiffs' Reply to Defendants' Opposition – Document #49 (February 18, 2025) 27 pp.

Conclusion

This initial review of the two preliminary injunctions merely skims the surface of this complex and important topic. But it's a necessary step in fully understanding how these lawsuits will proceed, and how they relate to other litigation in American courtrooms in which plaintiffs are pushing back against overreach by the White House.

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