

Federal Assistance in Jeopardy? What to Know about OMB Guidance About Hundreds of Billions in Federal Research and Loans to Research Institutions, Universities, and Private Organizations

by Alex Hontos, Chris DeLong, and Eric Weisenburger

On January 27, the Acting Director of the Office of Management & Budget issued a [new Memorandum \(M-25-13\)](#) that presages significant disruption—if not outright cancellation—of many federal assistance awards. Spanning federal grants and federal loans and loan guarantees, recipients of such funds should be paying close attention to current or planned projects, experiments, research, and programs funded in whole or in part by federal funds.

While the impact of the Memorandum will play out over the coming months, Dorsey clients may be profoundly impacted by the changing landscape (and sudden unreliability) of one of their largest funding partners. And even if client awards or loans are not terminated or canceled outright, given the ambiguity of the Memorandum (including for government grants managers and officials who must implement it), there will be significant uncertainty, delay, and conflicting guidance for recipients of federal funds going forward.

What Does the Memorandum Do?

The Memorandum seeks to bolster recent pronouncements by the Administration targeting policies involving “Marxist equity, transgenderism, and green new deal social engineering policies.” In an effort to eliminate such programs, the Memorandum directs federal agencies that administer federal grants (e.g., research and development) and federal loans (e.g., SBA section 7 program) to analyze all current federal grants and loans for compliance with the President’s recent executive orders. Agencies must do this by February 10. Given that there are many thousands of active federal awards and loans involving many billions of dollars, the effort required to undertake this task will be considerable and may significantly delay other more commonplace interactions with federal grants administrators and awarding agencies. In short, in the near term, federal agencies may be focused on this Memorandum to the detriment of the myriad tasks involved in sponsored research and loan program administration.

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While that government-wide census of grants and loans takes place, the Memorandum contains several in-the-meantime directives to federal assistance officials, which will have trickle down effects on recipients of federal grants, cooperative agreements, loans, and loan guarantees:

- Effective 1/28 at 5pm, agencies must “temporarily pause” all activities “related to obligation or disbursement of all federal assistance . . . that may be implicated by the recent executive orders” including, but not limited to, “financial assistance for foreign aid, nongovernmental organizations, DEI, woke gender ideology, and the green new deal.”
- Effective “immediately” [1/27], agencies must identify any legally mandated actions or deadlines for assistance programs related to covered programs.
- Agencies may “continue to tak[e] certain administrative actions” or “record[] obligations expressly required by law.”
- Agencies must assign a senior political appointee to ensure that “Federal financial assistance conforms to Administration priorities” and “cancel awards already awarded that are in conflict with Administration priorities” and “initiate investigations” to identify “underperforming recipients.”

Issues for Recipients of Research Funding/Federal Financial Assistance to Think About

The Memorandum is imprecise in its terms, ambiguous in its scope, and questionable in its validity to the extent that it violates other sources of law (e.g., constitutional protections, statutory authorizations for specific funding, and the Impoundment Control Act of 1974). Even to the extent that it causes changes to existing federal grant awards or loans, clients may have claims or requests for additional time and money to wind up or close out programs. While these issues play out over the coming weeks and months, recipients of federal assistance funding should consider taking steps now to ensure that they are best positioned to mitigate the impact of this Memorandum and navigate the shifting sands of what for many of our clients is a large sponsor of client programs.

Some steps that our clients should consider and assess include:

- Develop talking points or white papers for grants management officers for why an existing program does not implicate the prohibited policies identified in the Memorandum and other executive orders.
- Take your lead not from the President or other senior officials, but from your grants management office or official, who is the person vested with authority to direct your sponsored research efforts.
- Seek clarification, early and often, from your grants management official about what activities under the grant are permissible and what are not—seek written assurances to confirm the scope of activities to best enable their reimbursement in the future.
- Review internal policies for potential inconsistency with the Executive Orders identified in the Memorandum, including the Executive Order prohibiting DEI programs, which may cause increased government scrutiny on your assistance awards.
- Retain documentation and records related to any impacts within your organization arising from the Administration’s changes, Executive Orders, and the Memorandum.
- Seek additional time, rebudgeting, program changes, and additional compensation,

as appropriate, for government-directed changes to existing programs.

- Prepare for the potential for delayed government reimbursements for sponsored research, and for potential cancellations and terminations of sponsored research.
- Consider engaging the grant disputes process if your organization is harmed or damaged by your counterparty's (the Federal government) change to existing contractual relationship, including administrative or judicial remedies.

Dorsey will continue to monitor the fast-changing environment related to federal grants, contracts, and cooperative agreements—your organization should do the same.