

COMPLIANCE CONVERSATIONS

Chaos in Grants: Navigating the New Administration's Funding Freezes and Executive Orders

1-2 p.m. ET | Wednesday, February 5



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Chaos in Grants: Navigating the New Administration's Funding Freezes and Executive Orders

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February 5, 2025



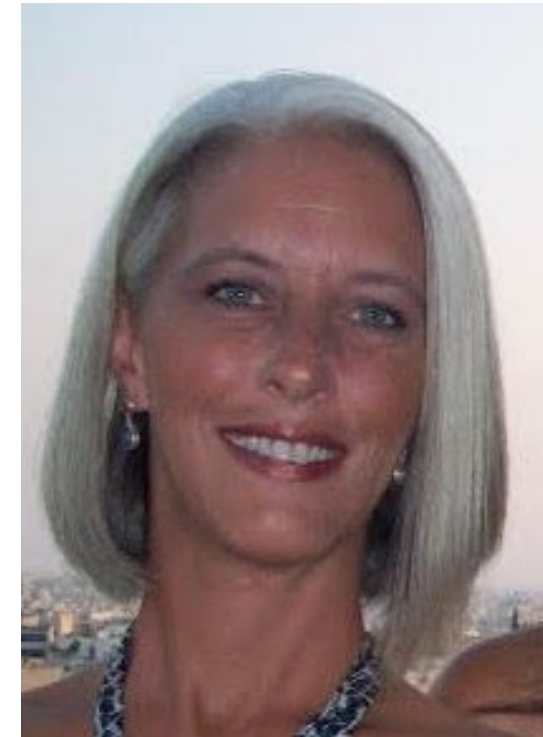
Today's Presenter



Paula Heller, MBA, CGMS

Grants Lifecycle Solutions Lead
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In Cherry Bekaert's Government & Public Sector industry group, Paula is part of the advisory team for grant administration and compliance engagements. Her career in accounting and grants management spans over 25 years in the not-for-profit, public, and private sectors. Her specialties include full cycle grant management and accounting, risk assessment, subrecipient monitoring, 2 CFR 200 Uniform Guidance compliance, internal controls, grant reconciliations, staffing structures and workflow analysis, and policy and procedure development.



Today's Presenter



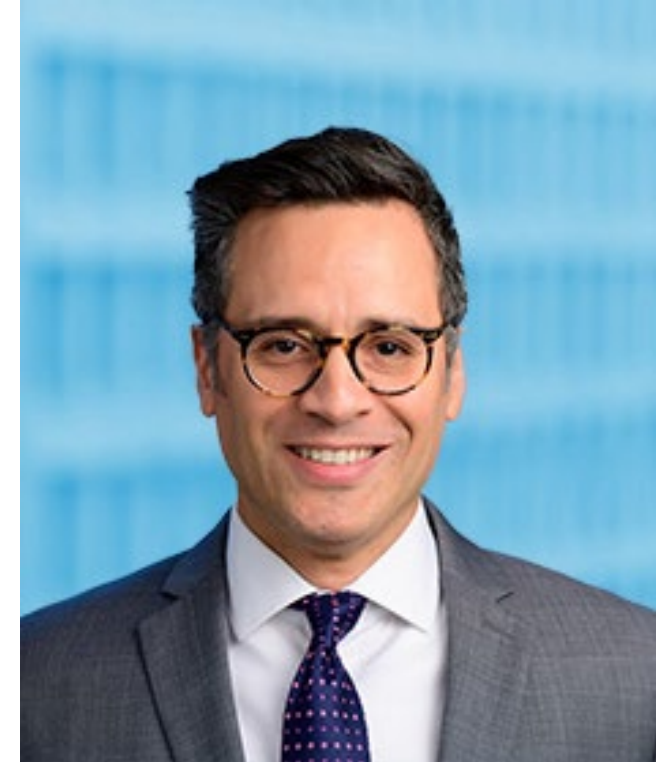
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Partner

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Phillip is an attorney at Feldesman Leifer LLP in Washington, DC. His bilingual, nationwide practice serves community health centers, non-profit organizations, municipalities, local government agencies, educational institutions, and other federal grantees.

An attorney for close to 30 years, as well as a TV and radio news commentator, university professor, and public servant in both the executive and legislative branches of Puerto Rico's government, Phillip taps into each of these unique experiences to deliver exceptional service to his clients.





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Agenda



- ❑ Current State of Federal Grants
- ❑ Legal Authority for Government Branches
- ❑ Continuing Resolution and the Federal Budget
- ❑ Forecast for ARPA/SLFRF Program Funding
- ❑ Recommended Actions for Grant Managers
- ❑ The Future for NOFOs
- ❑ Q&A

Poll Question 1



The New Administration took office:

- In January 2025
- In November 2024
- I'll use a lifeline

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Current State of Federal Grants

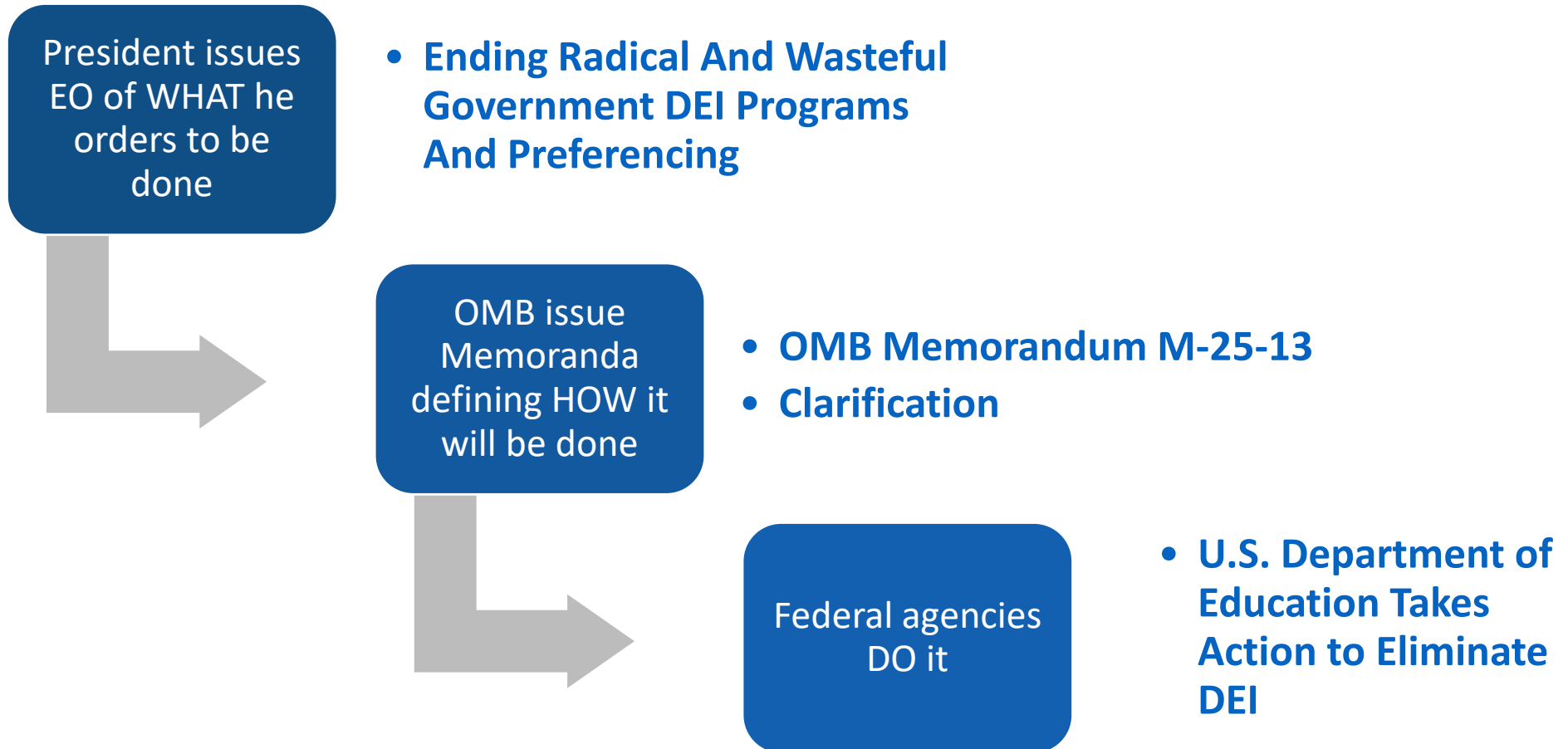


Ten Days Can Feel Like a Lifetime



- *Last Week:*
 - 1/27 - OMB Memorandum M-25-13 effective at 5PM 1/28 – freezes obligation & disbursement
 - 1/28 - Lawsuit filed, with Federal Court in DC issuing administrative stay until 5PM 2/3
 - 1/28 - OMB clarification provided, limiting scope, referencing specific EOs
 - 1/29 - Memorandum M-25-14 “rescinded” M-25-13 – 2 lines, but freeze still being executed
 - 1/31 – Federal Court in Rhode Island issues temporary restraining order to enjoin interference with open awards to States
- *This Week So Far:*
 - 2/3 – Federal Court in DC issues TRO to protect open awards: necessary b/c OMB Memo rescission unclear and federal grantees submitted evidence of continuing difficulties accessing funds
 - 2/3 – Action Filed in Federal Court in Maryland to enjoin implementation of DEI EOs

Ten Days Can Feel Like a Lifetime



Sample Executive Orders



- *What is still under review from funding perspective based on prior EOs:*
 - [Reevaluating and Realigning United States Foreign Aid](#), directly addressing foreign assistance funding;
 - [Unleashing American Energy](#), freezing all programmatic funding for “green new deal” programs;
 - [Protecting the American People Against Invasion](#), freezing Department of Justice and Department of Homeland Security programs and contracts pending a review of immigration enforcement programs;
 - [Ending Radical and Wasteful Government DEI Programs and Preferencing](#), terminating all DEIA programs and activities in the federal government;
 - [Ending Illegal Discrimination and Restoring Merit-Based Opportunity](#), terminating all DEIA-funded grant programs and contracts;
 - [Protecting Children from Chemical and Surgical Mutilation](#), ensure institutions receiving Federal research or education grants end the practice; and
 - [Ending Radical Indoctrination in K-12 Schooling](#), terminating funding for discriminatory treatment and indoctrination in K-12 schools.

Latent “Funding Freezes”: Immigrant Services (Sample 1)



EO *Protecting the American People Against Invasion* (Jan. 20, 2025)

“Sec. 19. Funding Review. The Attorney General and the Secretary of Homeland Security shall:

- (a) **Immediately review and, if appropriate, audit all contracts, grants, or other agreements providing Federal funding to non-governmental organizations supporting or providing services, either directly or indirectly, to removable or illegal aliens**, to ensure that such agreements conform to applicable law and are free of waste, fraud, and abuse, and that they do not promote or facilitate violations of our immigration laws;
- (b) **Pause distribution of all further funds** pursuant to such agreements pending the results of the review in subsection (a) of this section...”

Latent “Funding Freezes”: Gender-Affirming Care (Sample 2)



EO Protecting Children from Chemical and Surgical Mutilation (Jan. 28, 2025)

“Sec. 4. **Defunding Chemical and Surgical Mutilation.** The head of each executive department or agency (agency) that provides **research or education grants to medical institutions**, including **medical schools and hospitals**, shall, **consistent with applicable law** and in coordination with the Director of the Office of Management and Budget, **immediately** take appropriate steps to ensure that institutions receiving Federal research or education grants **end the chemical and surgical mutilation of children.**”

Latent “Funding Freezes”: DEIA (Sample 3)



EO Ending Illegal Discrimination and Restoring Merit-Based Opportunity (Jan. 21, 2025)

“Sec. 3(c) The Director of the OMB... shall: ...

(ii) Excise references to DEI and DEIA principles, under whatever name they may appear, from Federal acquisition, contracting, **grants**, and financial assistance procedures to streamline those procedures, improve speed and efficiency, lower costs, and comply with civil-rights laws; and

(iii) **Terminate** all “diversity,” “equity,” “equitable decision-making,” “equitable deployment of financial and technical assistance,” “advancing equity,” and like **mandates, requirements, programs, or activities**, as appropriate.”

Latent “Funding Freezes”: Education (Sample 4)



EO Ending Radical Indoctrination in K-12 Schooling (Jan. 29, 2025)

“Sec. 3. Ending Indoctrination Strategy. (a) Within 90 days of the date of this order...[the Secretaries of ED, DoD and HHS, with the AG] shall provide ... to the President...recommendations and a plan for:

- (i) ***eliminating Federal funding or support [grants or contracts] for illegal and discriminatory treatment and indoctrination in K-12 schools, including based on gender ideology and discriminatory equity ideology;*** and
- (ii) protecting parental rights, pursuant to FERPA, 20 U.S.C. 1232g, and the PPRA, 20 U.S.C. 1232h, with respect to any K-12 policies or conduct implicated by the purpose and policy of this order....

[and] *Each agency’s process to prevent or rescind Federal funds, to the maximum extent consistent with applicable law,* from being used by an ESA, SEA, LEA, elementary school or secondary school to directly support or subsidize”

Latent “Funding Freezes”: Energy (Sample 5)



EO Unleashing American Energy (Jan. 20, 2025)

Sec. 7. Terminating the Green New Deal.

“(a) All agencies shall immediately **pause** the disbursement of funds appropriated through the Inflation Reduction Act of 2022 (Public Law 117-169) or the Infrastructure Investment and Jobs Act (Public Law 117-58), including **but not limited to funds for electric vehicle charging stations made available through the National Electric Vehicle Infrastructure Formula Program and the Charging and Fueling Infrastructure Discretionary Grant Program**, and shall review their processes, policies, and programs for issuing grants, loans, contracts, or any other financial disbursements of such appropriated funds for consistency with the law and the policy outlined in section 2 of this order. Within **90** days of the date of this order, all agency heads shall submit a report to the Director of the NEC and Director of OMB that details the findings of this review, including recommendations to enhance their alignment with the policy set forth in section 2. No funds identified in this subsection (a) shall be disbursed by a given agency until the Director of OMB and Assistant to the President for Economic Policy have determined that such disbursements are consistent with any review recommendations they have chosen to adopt.”

Federal Court Action



- Two cases in Federal District Ct. – DC and Rhode Island
- Rationale from D.D.C. decision Feb. 3, 2025:

“Plaintiffs allege that OMB’s funding freeze lacked any reasonable basis and failed to consider the disastrous effects it would have.... Defendants, meanwhile, insist that “there is nothing irrational about a temporary pause in funding” when it is done “to ensure compliance with the President’s priorities.” ...**But furthering the President’s wishes cannot be a blank check for OMB to do as it pleases.** The APA requires a rational connection between the facts, the agency’s rationale, and the ultimate decision. Defendants have offered no rational explanation for why they needed to freeze all federal financial assistance— with less than twenty-four-hours’ notice—to “safeguard valuable taxpayer resources.” ...If Defendants intend to conduct an exhaustive review of what programs should or should not be funded, such a review could be conducted without depriving millions of Americans access to vital resources. As Defendants themselves admit, the memorandum implicated as much as \$3 trillion in financial assistance. That is a breathtakingly large sum of money to suspend practically overnight. **Rather than taking a measured approach to identify purportedly wasteful spending, Defendants cut the fuel supply to a vast, complicated, nationwide machine—seemingly without any consideration for the consequences of that decision. To say that OMB “failed to consider an important aspect of the problem” would be putting it mildly.**”



- Similar in Both Courts - Remember TRO lasts only until Preliminary Injunction, about 10 days
 - Government is enjoined from implementing, giving effect to, or reinstating under a different name the directives in OMB Memorandum M-25-13 with respect to the disbursement of Federal funds under all open awards;
 - Government must provide written notice of the court's temporary restraining order 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 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 release any disbursements on open awards that were paused due to OMB Memorandum M-25-13;
 - Government shall file a status report on or before February 7, 2025, apprising the court of the status of its compliance with this Order, including by providing a copy of the written notice described above; and
 - Parties shall meet and confer and file a joint status report proposing a preliminary injunction briefing schedule on or before February 7, 2025.

Latest Lawsuit – Filed Feb. 3, 2025



- **Plaintiffs** - National Association of Diversity Officers in Higher Education; American Association of University Professors; Restaurant Opportunities Centers United; Mayor and City Council of Baltimore, Maryland
- **Six Causes of Action:**
 - **Count 1 - ULTRA VIRES (SPENDING CLAUSE)** “When the President takes measures incompatible with the expressed or implied will of Congress, his power is at its lowest ebb...”
 - **Counts 2 & 3 - FIFTH AMENDMENT DUE PROCESS (VAGUENESS)** “fails to provide a person of ordinary intelligence fair notice of what is prohibited...”
 - **Counts 4 & 5 - FIRST AMENDMENT (FREE SPEECH CLAUSE)** “impermissibly restricts Plaintiffs constitutionally protected speech based on its content and viewpoint...”
 - **Count 6 – Separation of Powers** - The Constitution vests spending powers exclusively in the hands of Congress. *See* U.S. Const. art. I, § 1, 8.
- No request (yet!) for emergency injunctive relief

Other Developments



- Continuing Payment Debacle, reports of both PMS and ASAP
- Agency Communication “hold” continues best we can tell
- Shutdown of Federal Websites to be Scrubbed of unacceptable content (complex endeavor)
- No continuation awards, no competition awards, no lifting of pending funding restrictions
- Termination of Certain Types of Awards last Friday such as C.D.C. awards (ALN 93.944, “Expanding Access to Status Neutral Services for Gender Diverse People”)

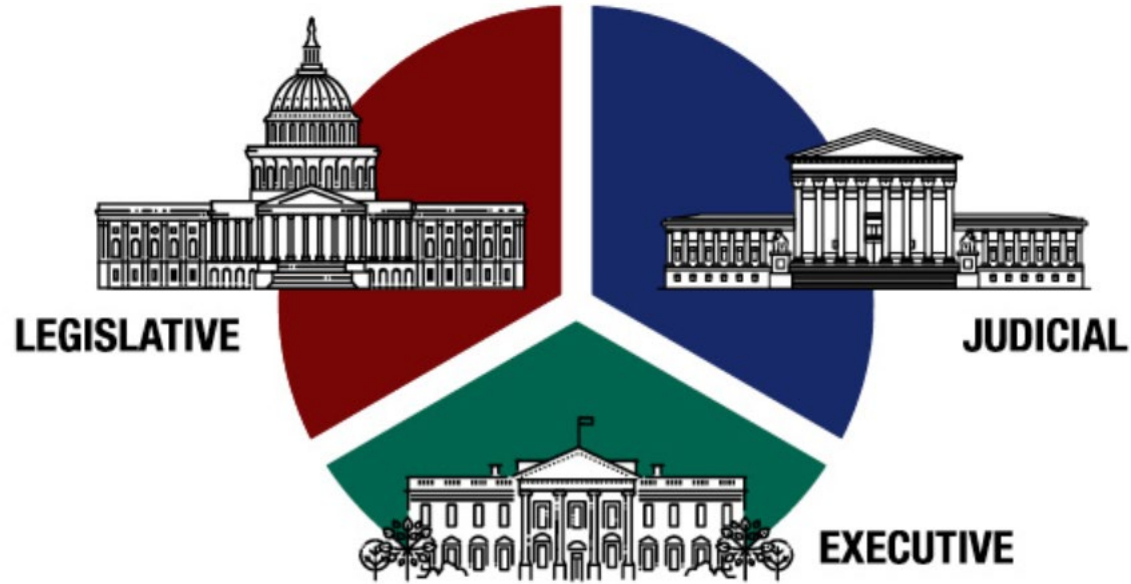
Legal Authority for Government Branches



Federal Grant System Legal Framework



Separation of Powers



Three Considerations



1. Can a new Administration terminate or significantly cut a program?
2. Can a new Administration terminate a particular grant or grants because they further policy objectives that are inconsistent with the Administration's policy objectives?
3. To what extent can a grant's terms and conditions be adjusted in ways that may be of concern to a grantee?

Note: By “grants,” we mean “federal financial assistance,” which may also be in the form of “cooperative agreements.” For purposes of these slides, grants and cooperative agreements are collectively termed “grants.”

Resource: Feldesman Client Advisory: Federal Grants Impacted by Executive Orders of the New Administration (<https://www.feldesman.com/client-advisory-federal-grants-impacted-by-executive-orders-of-the-new-administration/>)

Question 1 – Rescinding Federal Agency Funds



- Governed by the Impoundment Control Act of 1974
- President can initiate “rescission” for unobligated funds
- Procedure set by statute (the ICA), making it relatively easy for rescission to occur when the President and the majority of each Chamber of Congress is aligned. In particular, a rescission bill will almost certainly receive a fairly prompt floor vote.

Question 2 – Grant Termination / Suspension



- Generally, only can be accomplished based upon:
 - Noncompliance by the grantee
 - Consent of the grantee
 - Pursuant to specific terms and conditions of the award (which may include a term stating that unilateral policy-change-based terminations are permitted)
 - See 2 C.F.R. § 200.340.
- Termination likely includes refusal to fund future continuation periods when appropriations are available to do so, and the grantee remains compliant with grant terms and conditions.
- Suspension of payments bases are likely similarly limited.
2 C.F.R. §§ 200.208 and 200.339.

2 CFR § 200.340 Termination (From 2024 Changes)



§ 200.340 Termination.

(a) The Federal award may be terminated in part or its entirety as follows:

- (1) By the Federal agency or pass-through entity if the recipient or subrecipient **fails to comply with the terms and conditions** of the Federal award;
- (2) By the Federal agency or pass-through entity with the consent of the recipient or subrecipient, in which case the two parties must agree upon the termination conditions. These conditions include the effective date and, in the case of partial termination, the portion to be terminated;
- (3) By the recipient or subrecipient upon sending the Federal agency or pass-through entity a written notification of the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Federal agency or pass-through entity determines that the remaining portion of the Federal award will not accomplish the purposes for which the Federal award was made, the Federal agency or pass-through entity may terminate the Federal award in its entirety; or
- (4) By the Federal agency or pass-through entity pursuant to the terms and conditions of the Federal award, including, to the extent authorized by law, **if an award no longer effectuates the program goals or agency priorities.**

(b) **The Federal agency or pass-through entity must clearly and unambiguously specify all termination provisions in the terms and conditions of the Federal award.**

It's a Contract (Basically)



- While not a federal procurement contract, which is often referred to as a “government contract”, the Grant Agreement is – in almost every case – a contract
- Or as stated by the Supreme Court, “In the nature of a contract...”
- Some agencies have the grantee countersign, others do not. But the affirmative act of drawing down funds binds the grantee to the Agreement’s terms and conditions

Question 3 – Grant Terms and Conditions



- Congress has broad discretion to set funding conditions, subject to five relatively weak limitations. Per *South Dakota v. Dole*, 483 U.S. 203 (1987):
 - In furtherance of the general welfare (generally not a practical barrier)
 - Unambiguous (must be capable of knowingly accepting the condition, even if the conditions was somewhat indeterminate in scope at the time of acceptance—increasingly a valid a line of argument)
 - Related to the overall objectives of the program (however, “relatedness” is a broad concept)
 - Independent Constitutional Bar (historically most effective limitation)
 - *See also* Agency for Int’l Dev. v. Alliance for an Open Society Int’l, 570 U.S. 205 (2013) (regarding permissible scope of funding conditions affecting first amendment rights.
 - Not coercive (though grant funding is rarely to have a coercive effect because acceptance of funding is voluntary)

Grant Terms and Conditions (cont.)

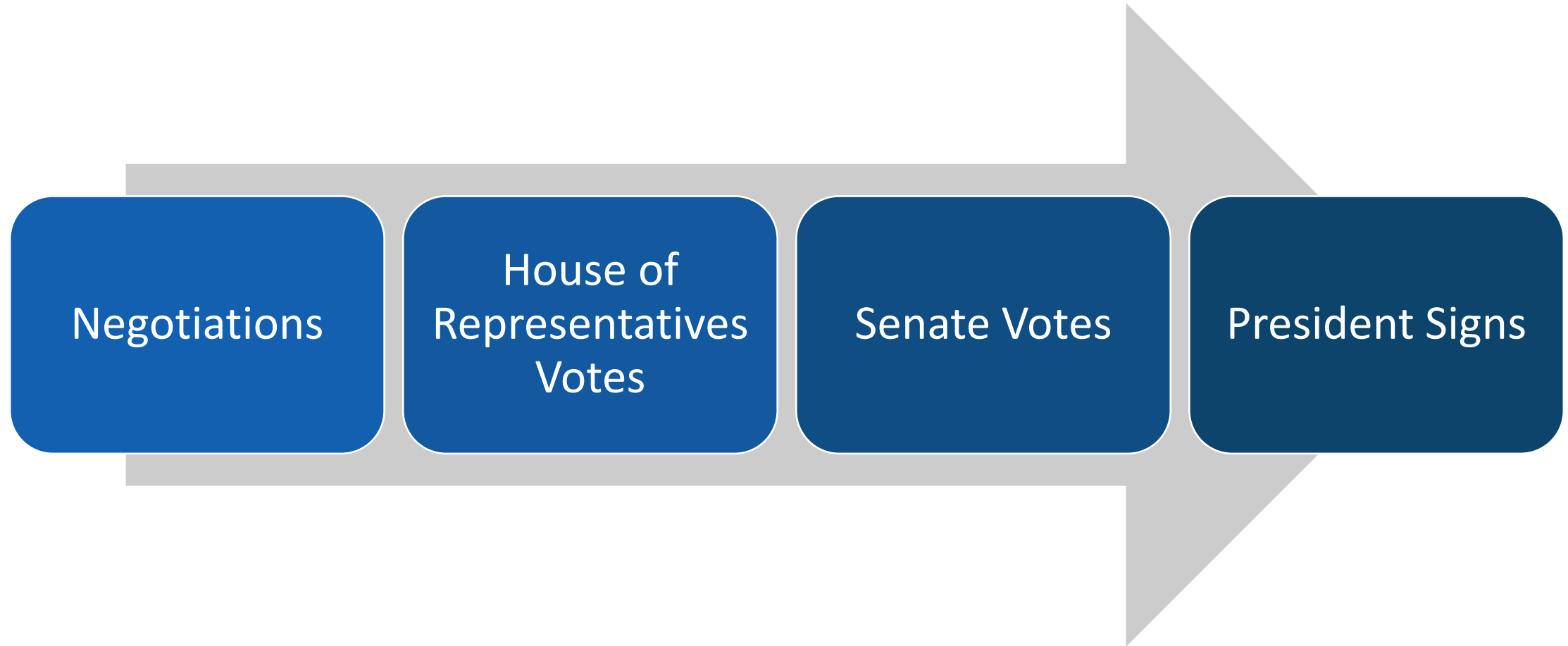


- Executive Agencies are also limited by *South Dakota v. Dole*, but, more importantly, must act within their statutory authority under the program statute. Heavily fact dependent.
For examples, see:
 - *City of Los Angeles v. Barr*, 929 F.3d 1163 (9th Cir. 2019) (finding adequate authority to impose certain preference categories in COPS Program discretionary grant competitive award process)
 - *City of Los Angeles v. Barr*, 941 F.3d 931 (9th Cir. 2019) (finding DOJ lacked authority to impose certain conditions upon Byrne JAG Program formula grants)

Continuing Resolution and the Federal Budget



The Continuing Resolution Process





DIVISION A—FURTHER CONTINUING APPROPRIATIONS ACT, 2025

SEC. 101. The Continuing Appropriations Act, 2025 (division A of [Public Law 118–83](#)) is amended—

(1) by striking the date specified in section 106(3) and inserting “*March 14, 2025*”;

(2) in section 126 to read as follows:

“SEC. 126. Notwithstanding section 101, amounts are provided for ‘District of Columbia—Federal Payment for Emergency Planning and Security Costs in the District of Columbia’ at a rate for operations of \$90,000,000, of which not less than \$50,000,000 shall be for costs associated with the Presidential Inauguration to be held in January 2025: *Provided*, That such amounts may be apportioned up to the rate for operations necessary to maintain emergency planning and security activities.”; and

(3) by adding after section 152 the following new sections:

“SEC. 153. Amounts made available by section 101 for ‘Department of Commerce—National Oceanic and Atmospheric Administration—Procurement, Acquisition and Construction’ may be apportioned up to the rate for operations necessary to maintain the acquisition schedule for Geostationary Earth Orbit in an amount not to exceed \$625,000,000.

The reliance on continuing resolutions has been more pronounced since the 1980s, with some fiscal years requiring multiple CRs to cover different periods. For instance, in some years, Congress has passed several short-term CRs before reaching a final budget agreement. The use of CRs highlights the complexities and sometimes contentious nature of the federal budget process.

The Continuing Resolution Negotiation Process



Crisis Management & Political Strategy:

- Deadlines as leverage
- Backroom deals

Behind the Scenes Negotiations:

- Leadership Involvement
- The White House
- Stakeholders & Lobbyists

Legislative Process:

- Fast-Tracking
- Vote Whipping

What You Do Not See:

- Late-night meetings
- Drafts in flux
- Staff power
- Presidential threat of veto



The administration can leverage Continuing Resolutions to advance his policy objectives and political strategy in several ways:

- Policy Riders and Provisions: Advancing Key Initiatives
- Negotiation Leverage: Bargaining Tool
- Public Messaging: Shaping Public Perception
- Fiscal Control: Influencing Budget Allocations
- Strategic Timing: Setting Deadlines

Forecast for ARPA/SLFRF Program Funding



A Unique Program



- Congress mandated Treasury to push funds out per formula (program funds obligated through statute and execution of document)
- No drawdowns to make, no cash management rules per 2 C.F.R. § 200.305, keep interest, keep program income
- No prior approvals
- Recipients' projects obligated as of Dec. 31, 2024
- Two-year long liquidation
- Possible risks (a guess) vis-à-vis vested rights to funds (subject to program rules)
- Rhode Island TRO includes Treasury ...

Poll Question 2

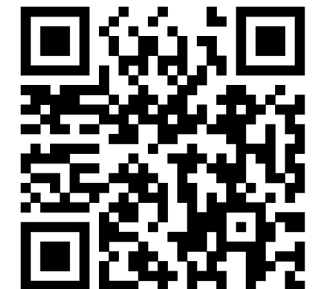


States and local governments must close their ARPA SLFRF awards by:

- September 29, 2026 for Surface Transportation and Title I projects
- December 31, 2026 for all other eligible uses
- All of the above

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Recommended Actions for Grant Managers



Stay on Top of Your Current Awards



Stay Informed

Read the news

Watch webinars

Visit agency websites

Check WhiteHouse.gov for EOs

Stay Compliant

Check in with your Program Officer and Budget Officer for updates

Hit deadlines for all reporting requirements

Thoroughly Review Your Current Awards



Review Current Portfolio

Check goals and objectives for non-compliance with EOs

Read the terms and conditions for termination language

Review Current Expenses

Tighten drawdown timeline for faster advances or reimbursements

Evaluate what might become ineligible in federal budget



Funding Strategies

Consider alternatives, such as...

State and local funds

Foundations and non-profits

Commercial entities

Contingency Plans

Review and update existing plans based on current climate

Develop plans right now if they do not exist

Include strategies for maintaining operations and minimizing negative impacts



Waterfall Effect

Complete a funding cycle analysis

Review the timing and reliability of incoming grants and funds

Identify any periods where funding may be uncertain or insufficient





States and Local Governments must retain their ARPA SLFRF records for this long:

- As provided in the applicable records retention policy
- For three years after award closeout
- For five years after all funds have been expended or returned to Treasury, whichever is later

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The Future for NOFOs



If We Had a Crystal Ball...



Things We Know

- 1) There will be federal agency re-structuring
- 2) There will be federal agency strategic realignment
- 3) The continuing resolution will expire and will be leveraged by the new administration
- 4) Advocacy and lobbying are powerful

Things That Are Unknown

- 1) Certain open awards will be terminated
- 2) When will new funding opportunities open
- 3) What EEO, DEI, and other civil rights regulations will change
- 4) Ultimate resolution of EO disputes through Supreme Court

Questions?



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