



US COURT ORDERS TEMPORARILY RESTRAIN THE “STOP-WORK” & “STOP-PAYMENT” ORDERS ON US FOREIGN ASSISTANCE, ALSO AFFECTING PEPFAR

– EXPLANATION OF TEMPORARY RESTRAINING ORDERS (TROS)

5 FEBRUARY 2025

On January 27, 2025, Matthew J. Vaeth, Acting Director of the Office of Management and Budget (“OMB”), issued a memorandum (“M-25-13”) directing federal agencies to “complete a comprehensive analysis of all of their Federal financial assistance programs to identify programs, projects, and activities that may be implicated by any of the President’s executive orders.” ECF No. 1 ¶ 15.

That memorandum further required agencies to “temporarily pause all activities related to [the] obligation or disbursement of all Federal financial assistance, and other relevant agency [activities] that may be implicated by the executive orders, including, but not limited to, financial assistance for foreign aid, nongovernmental organizations, DEI, woke gender ideology, and the green new deal.” Id. ¶ 16 (emphasis omitted); Off. of Mgmt. & Budget, Exec. Off. of the President, *Temporary Pause of Agency Grant, Loan, and Other Financial Assistance Programs* (Jan. 27, 2025),

That memorandum defines “Federal financial assistance” as: “(i) all forms of assistance listed in paragraphs (1) and (2) of the definition of this term at 2 [C.F.R. §] 200.1; and (ii) received or administered by recipients or subrecipients of any type except for assistance received directly by individuals.” Id. ¶ 17. This includes all federal assistance in the form of grants, loans, loan guarantees, and insurance. Id. ¶ 18; see 2 C.F.R. § 200.1.

AS RELEVANT EXECUTIVE ORDERS, IT LISTS:

- Protecting the American People Against Invasion (Jan. 20, 2025);
- Reevaluating and Realigning United States Foreign Aid (Jan. 20, 2025);
- Putting America First in International Environmental Agreements (Jan. 20, 2025);
- Unleashing American Energy (Jan. 20, 2025);
- Ending Radical and Wasteful Government DEI Programs and Preferencing (Jan. 20, 2025);
- Defending Women from Gender Ideology Extremism and Restoring Biological (Jan. 20, 2025);
- Truth to the Federal Government (Jan. 20, 2025); and
- Enforcing the Hyde Amendment (Jan. 24, 2025).

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Due to the fast moving pace of announcements from the USG, and several pending legal actions, this note has been prepared by WG 3 of CHANGE on the basis of available information and will be updated from time to time. This version is as of 5 February 2025.

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Temporary Pause of Agency Grant, Loan, and Other Financial Assistance Programs, at 1-2.

It is especially important to note that the OMB Memorandum specifically lists the January 20, [Executive Order Reevaluating and Realigning United States Foreign Aid](#), which was used by both [USAID](#) and the [Department of State](#) to issue Stop Work Orders requiring all foreign assistance recipients to cease all activities.

Although a [waiver](#) on life saving humanitarian assistance programs was announced on January 28, 2025 by the Secretary of State and a clarifying [Info Memo for the PEPFAR Implementing Agencies and PEPFAR Country Coordinators](#) was sent on February 1, 2025 purporting to list PEPFAR activities that might be resumed pursuant to the Secretary of State waiver, the Info Memo stated: "This limited waiver does not apply to activities that involve abortions, family planning, conferences, administrative costs other than those covered by above, gender or DEI ideology programs, transgender surgeries, or other non-life saving assistance. Any other activities not specifically mentioned in this guidance may not be resumed without express approval."

The "Info Memo" was woefully incomplete.

- In addition to its explicit exclusions, by allowing only listed activities to be undertaken, it excludes key PEPFAR activities that are consistent with the definition of life-saving humanitarian assistance, including all prevention work and PrEP (other than relating to PMTCT), activities relating to orphans and vulnerable children, medical male circumcision, prevention programs targeting adolescent girls and young women), gender-based violence programs, community-led monitoring programs, and other essential programs.

KEY COURT CASES HAVE GONE FURTHER THAN THE WAIVER AND REQUIRE A RESUMPTION OF ALL PEPFAR-RELATED FUNDING IN PARTICULAR AND ALL FEDERAL FOREIGN ASSISTANCE IN GENERAL:

In a Rhode Island District Court case brought by several states, the Court issued a temporary restraining order against the operation of OMB Memorandum listed therein:

Consistent with the findings above, and to keep the status quo, the Court hereby ORDERS that a TEMPORARY RESTRAINING ORDER is entered in this case until this Court rules on the States' forthcoming motion for a preliminary injunction, which the States shall file expeditiously.

During the pendency of the Temporary Restraining Order, Defendants shall not pause, freeze, impede, block, cancel, or terminate Defendants' compliance with awards and obligations to provide federal financial assistance to the States, and Defendants shall not impede the States' access to such awards and obligations, except on the basis of the applicable authorizing statutes, regulations, and terms.



If Defendants engage in the “identif[ication] and review” of federal financial assistance programs, as identified in the OMB Directive, such exercise shall not affect a pause, freeze, impediment, block, cancellation, or termination of Defendants’ compliance with such awards and obligations, except on the basis of the applicable authorizing statutes, regulations, and terms.

Defendants shall also be restrained and prohibited from reissuing, adopting, implementing, or otherwise giving effect to the OMB Directive under any other name or title or through any other Defendants (or agency supervised, administered, or controlled by any Defendant), such as the continued implementation identified by the White House Press Secretary’s statement of January 29, 2025. ECF No. 44. Defendants’ attorneys shall provide written notice of this Order to all Defendants and agencies and their employees, contractors, and grantees by Monday, February 3, 2025, at 9 a.m. Defendants shall file a copy of the notice on the docket at the same time.

Defendants shall comply with all notice and procedural requirements in the award, agreement, or other instrument relating to decisions to stop, delay, or otherwise withhold federal financial assistance programs.

FOLLOWING THE COURT’S TEMPORARY RESTRAINING ORDER AND PURSUANT TO THE ORDER THAT NOTICE BE GIVEN TO ALL RELEVANT FEDERAL AGENCIES, A NOTICE OF COURT ORDER WAS ISSUED.

That Notice states:

1. Federal agencies cannot pause, freeze, impede, block, cancel, or terminate any awards or obligations on the basis of the OMB Memo, or on the basis of the President’s recently issued Executive Orders.
2. This prohibition applies to all awards or obligations—not just those involving the Plaintiff States in the above-referenced case—and also applies to future assistance (not just current or existing awards or obligations).
3. Agencies may exercise their own authority to pause awards or obligations, provided agencies do so purely based on their own discretion—not as a result of the OMB Memo or the President’s Executive Orders and provided the pause complies with all notice and procedural requirements in the award, agreement, or other instrument relating to such a pause.
 - a. On pages 11 and 12 of the Order, the Court prohibits agencies from pausing funding “except on the basis of the applicable authorizing statutes, regulations, and terms.” Thus, agencies remain free to exercise their own discretion under their “authorizing statutes, regulations, and terms,” including any exercise of discretion to pause certain funding. Additionally, agencies remain free to take action pursuant to the terms of the relevant award or obligation, such as in cases of grantee noncompliance.



- b. Any exercise of agency discretion, however, cannot be based on the OMB Memo or the President's Executive Orders, given that the Court has prohibited agencies from "implementing or giving effect to the OMB [Memo] under any other name or title[J]" (Order, pg.12). Additionally, any decision to pause, stop, delay, or otherwise withhold federal financial assistance programs must comply with all notice and procedural requirements in the award, agreement, or other instrument setting forth the terms of the award or obligation.
4. Out of an abundance of caution, all federal agencies (even those not named as defendants in the case) should comply with the above-referenced terms

AS A RESULT OF THE COURT ORDER, THE DEPARTMENT OF STATE, EVEN THOUGH NOT A NAMED FEDERAL AGENCY IN THE CASE, IS ENJOINED FROM "IMPEDING OR BLOCKING" ANY PREVIOUS AUTHORIZED PEPFAR "AWARDS OR OBLIGATIONS," EVEN THOUGH FOREIGN ASSISTANCE RECIPIENTS AND SUB-RECIPIENT ARE NOT NAMED PLAINTIFFS.

In addition to the Rhode Island District Court TRO, a **second temporary restraining order (TRO)** has been entered in a District of Columbia case brought by the National Council of Nonprofits and others against the Office of Budget Management and its Acting Director enjoining the defendants 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; it is further ORDERED that Defendants 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; ...

THE TRO GOES BEYOND EVEN THE RHODE ISLAND ORDER IN THAT IT MANDATES FEDERAL AGENCIES TO RELEASE ANY DISBURSEMENT ON OPEN AWARDS THAT WERE PAUSED, BY REFERENCE INCLUDING ALL PAUSES AND STOP-WORK ORDERS ON ALL FOREIGN ASSISTANCE, INCLUDING PEPFAR AND OTHER GLOBAL HEALTH ASSISTANCE.



It is important to note, however, that these two TROs are temporary and subject to further hearing and appeal:

- Notices of Court Orders might also be interpreted as exceeding the scope of the TROs.
- Of course, the current US administration is also capable of wilful defiance of court orders.
- Moreover, the administration's gag orders that prevent relevant agencies from communicating externally and both staff layoffs and terminations are concerning with respect to getting required notices to foreign assistance recipients and also getting funds dispersed in a timely manner.
- It is also likely that many recipients and subrecipients in other countries have not received direct or indirect notice of the TROs.

NONETHELESS, IN OUR ANALYSIS, THE TROS GIVE FOREIGN ASSISTANCE RECIPIENTS FULL LEGAL AUTHORITY TO RESUME WORK DESPITE ENJOINED STOP-WORK ORDERS RECEIVED FOR USAID AND OTHER CONTRACT AND GRANT OFFICERS.

Thus, in addition to advocating that a full waiver be immediately implemented to allow ongoing funding of all PEPFAR and other global health funding, global health advocates can and should advocate that all PEPFAR funding recipients immediately restart work in compliance as any contrary stop-work order has been temporarily restrained.

