Cooley

Implementing the President's 'Department of Government Efficiency' Cost Efficiency Initiative

March 5, 2025

On February 26, 2025, the Trump administration released an executive order (EO) titled, "Implementing the President's 'Department of Government Efficiency' Cost Efficiency Initiative," which aims to transform the federal government's approach to spending on contracts, grants and loans.

The primary directives in the EO apply to "covered contracts and grants." This is defined as discretionary spending[1] through federal contracts, grants, loans and related instruments,[2] but carves out direct assistance to individuals;[3] expenditures related to immigration enforcement, law enforcement, the military, public safety and the intelligence community; and other critical, acute or emergency spending, as determined by the relevant agency head. Effective immediately, each agency head is to commence a review of all existing covered contracts and grants with the intention of terminating and modifying contracts and grants "to promote efficiency and advance the policies of the [Trump] Administration" through a reduction or reallocation of federal spending. Reviews will be conducted in consultation with the agency's Department of Government Efficiency (DOGE) team lead and are mandated for completion within 30 days of the EO's release. The EO prioritizes the review of covered contracts and grants to educational institutions and foreign entities for "waste, fraud, and abuse."[4]

The new EO leaves some discretion with agency heads to identify those "covered contracts and grants" that should be terminated to advance the twin goals of efficiency and promoting the Trump administration's policies – though the EO arguably directs agency personnel to apply a presumption of termination on the theory that it's more "efficient" to **not** spend federal funds on contract payments than to spend such funds. This EO's direction, and the uncertainty likely to follow among agency contracting personnel and contractors alike, parallels executive orders issued the first week of the new administration that direct similar agency reviews of federal financial assistance funding and implement a temporary "funding freeze" that has been the subject of federal court litigation since it began.

The new EO also transforms the process by which covered contracts and grants are reviewed and approved going forward.

- **New review process**: Each agency head is directed to conduct a "comprehensive review of each agency's contracting policies, procedures, and personnel" within 30 days of the EO and cannot issue or approve any new contracting officer warrants (e.g., authorization to execute contracts funded by taxpayer dollars on behalf of the government) during the review period, unless the agency head determines otherwise.

- **Written justifications**: Each agency is directed to build "a centralized technological system" that will record all payments connected with each covered contract and grant and require the inclusion of a "brief, written justification for each payment" prior to the payment's approval. Agency-specific guidance regarding the submission of these accountability measures will follow the build out of the system and are to be publicly available, as permitted by law and as deemed practicable by each agency head.

- **New contract award pause and requirement for approvals**: New covered contracts and grants may not be awarded until each agency head, in consultation with the agency's DOGE team lead, issues guidance on signing new contracts or modifying existing contracts consistent with the EO – though each agency head may approve new contracts prior to the issuance of such guidance on a case-by-case basis. In addition, the DOGE team lead for each agency will provide the administrator of the US DOGE service with a monthly "informational report" about the agency's contracting activities, which is to include all payment justifications.

Beyond the directives pertaining to covered contracts and grants, the EO also establishes temporary procedures for federal employee travel to conferences, for "non-essential purposes," a credit card freeze for all federal

employees (except for disaster relief, natural disaster response benefits, or operations or other critical services), and certain actions pertaining to real property subject to an agency's administration (in terms of confirmation of inventory, identification of lease termination rights and submission of a disposition plan for unnecessary government-owned real property).

The EO notes that it does not apply to:

- Law enforcement officers or covered contracts and grants pertaining to the enforcement of federal criminal or immigration law.
- US Customs and Border Protection and the Department of Homeland Security's US Immigration and Customs Enforcement.
- The uniformed services.[5]
- Any other covered grant or contract, agency component or real property that an agency head exempts in writing.
- Classified information or classified information systems.

This suggests that defense, intelligence and some homeland security agency contracts may be largely or entirely protected – though contractors with defense, intelligence and civilian agency customers should be alert to communication from their contracting officers and should immediately consider a proposed response to potential stop work orders and/or terminations. Notably, multiple federal district courts have enjoined various aspects of the president's first-week executive orders relating to federal financial assistance funding, and it's reasonable to expect that this EO also will be challenged in federal court.

Notes

1. Discretionary spending refers to funds that require approval by Congress and the president through an annual appropriations process. Such funds support a broad array of programs, ranging from defense to education. In contrast, mandatory spending refers to funding for entitlement programs, such as Medicare and Social Security.
2. "Related instruments" is not defined, but in this context could include nontraditional contractual vehicles, like cooperative agreements, cooperative research and development agreements (CRADAs) and other transaction agreements (OTAs).
3. "Direct assistance to individuals" is partly already excluded as nondiscretionary spending (e.g., Medicare and Social Security) but also may exclude federal programs supported by discretionary funding or a mix of discretionary and mandatory funding – such as certain benefits and services provided by the Department of Veterans Affairs (VA).
4. See also the executive order on "Reevaluating and Realigning United States Foreign Aid" (January 20, 2025).
5. According to 20 CFR 404.1330, generally: Navy, Marine Corps, Air Force, Army, National Oceanic and Atmospheric Administration (NOAA), Public Health Service, Fleet Reserve and the four US military service academies.

This content is provided for general informational purposes only, and your access or use of the content does not create an attorney-client relationship between you or your organization and Cooley LLP, Cooley (UK) LLP, or any other affiliated practice or entity (collectively referred to as "Cooley"). By accessing this content, you agree that the information provided does not constitute legal or other professional advice. This content is not a substitute for obtaining legal advice from a qualified attorney licensed in your jurisdiction, and you should not act or refrain from acting based on this content. This content may be changed without notice. It is not guaranteed to be complete, correct or up to date, and it may not reflect the most current legal developments. Prior results do not guarantee a similar outcome. Do not send any confidential information to Cooley, as we do not have any duty to keep any information you provide to us confidential. When advising companies, our attorney-client relationship is with the company, not with any individual. This content may have been generated with the assistance of artificial intelligence (AI) in accordance with our AI Principles, may be considered Attorney Advertising and is subject to our legal notices.

Key Contacts

David Fletcher **Washington, DC**	**dfletcher@cooley.com** **+1 202 728 7046**
Emily Mok Reston	emok@cooley.com

This information is a general description of the law; it is not intended to provide specific legal advice nor is it intended to create an attorney-client relationship with Cooley LLP. Before taking any action on this information you should seek professional counsel.

Copyright © 2023 Cooley LLP, 3175 Hanover Street, Palo Alto, CA 94304; Cooley (UK) LLP, 22 Bishopsgate, London, UK EC2N 4BQ. Permission is granted to make and redistribute, without charge, copies of this entire document provided that such copies are complete and unaltered and identify Cooley LLP as the author. All other rights reserved.