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THE CURRENT: Can the Trump administration freeze federal spending?

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PITA: You're listening to The Current, part of the Brookings Podcast Network. I'm your host, Adrianna Pita.

News broke Monday night that the Office of Management and Budget, the OMB, was issuing a “temporary pause” of federal agency grants, loans and other financial assistance programs, leading to chaos and confusion on Tuesday as federal agencies and the many state agencies, schools, hospitals and nonprofits who depend on federal funding scrambled to find out what programs are being affected. While that memo has now been rescinded, the Trump administration's move has provoked significant questions about congressional versus executive branch authority over federal spending.

With us to help make some sense out of what happened in the last 36 to 48 hours, what this OMB memo is about and the legal, constitutional issues at play is Molly Reynolds, senior fellow in Governance Studies. Molly, welcome back.

REYNOLDS: It's good to be here.

PITA: For our listeners, we are recording this on Wednesday afternoon at 2 p.m. There keep being lots of changes in this. News that the Trump administration was rescinding this OMB memo just came through to us a little bit ago, followed by a confusing statement from the White House on Twitter that the memo has been rescinded, but the federal funding freeze has not. We're all very confused. Molly, can you catch us up with what has happened and how wide-reaching was this?

REYNOLDS: Sure. I'll start by saying that it wouldn't surprise me if the level of confusion that we are experiencing in this moment, that others in Washington and frankly, quite consequentially, folks around the country, that the confusion is part of the point. So we're dealing with some folks in the executive branch who really have a very particular view of what they think the role of the federal government should be and the idea that it should be a lot smaller and involve a lot fewer things than we necessarily have right now. And so I think that what we're seeing broadly is kind of the first step or one of a set of first steps in an attempt to try and really dramatically remake the size and scope of the federal government.

More specifically, thinking about this particular document: so on Monday, the Office of Management and Budget released a memo. It's quite broad, quite vague, that really, in a lot of ways basically seeming to just turn off much of the federal government. There were some referenced exceptions in the memo to things like Social Security and Medicare, so, things that federal programs that go directly to benefit individuals. Tuesday morning, OMB sent an additional communication to individual agencies asking them to answer questions about 2600 different federal programs. Questions around were things in these programs being used to engage in DEI activities, were they in relation to various other things that the Trump administration has come out and said that they don't think the federal government should be doing. Over the course of the day on Tuesday, we saw both kind of mass confusion around the country on the part of local governments, on the part of nonprofits who really depend on federal resources. We saw in a number of states the state Medicaid systems stop working properly, that sort of thing. And then we also saw Trump administration officials sort of come out and say, oh no, the memo doesn't actually apply to X program or it doesn't actually apply to a Y program, despite the fact that, you know, that really wasn't clear. On Tuesday at the end of the day, we saw a federal judge put what's called an administrative stay in place, basically halting enforcement of the memo while the parties in the lawsuit, which was a set of outside groups challenging the legality of the memo, while they could fully brief the case. And then, as you said today, we've had this subsequent memo from OMB rescinding the previous memo. And as we are recording, we're still trying to figure out exactly what that means.

And so this is all, all this kind of back and forth exchange, publicly, privately, I think the biggest thing to sort of highlight is that both in the immediate and then certainly in the longer term, if in fact the OMB plans to disrupt these streams of funding, that this stands to be like very disruptive to people of all stripes who rely on various programs that the federal government executes. And exactly how disruptive, we just don't know yet because we're still trying to get our hands around the scope of what's going on.

PITA: When Congress was holding preliminary hearings for President Trump's nominee to be the new director of OMB, Russell Vought – he's also one of the chief architects of Project 2025 – there was this question of impoundment. What does that mean? What is the Impoundment Control Act? How does that all come into play with all of this?

REYNOLDS: Yeah, so the Impoundment Control Act was passed in 1974 in response to, in part President Nixon deciding that he, as the president, did not have to spend certain funds that Congress had appropriated. So constitutionally, Congress has what we call the power of the purse. Congress writes appropriations bills, and then the executive branch is responsible for actually effectuating the decisions that Congress has made in those bills, actually pushing the money out the door in various forms, whether that's benefits to individuals, whether it's contracts, what have you. And so Nixon, in several high-profile cases, decided that he didn't want his executive branch to make certain kinds of grants for which Congress had appropriated funds, that sort of thing. And so, in 1974, Congress passed the Impoundment Control Act and said that basically if the executive branch wants to refuse to spend money that Congress has appropriated, it has to go through sort of certain steps to do so. It can in sort of one set of circumstances, defer spending, but it has to tell Congress that it's doing that and kind of go through a prescribed set of steps. It can also rescind funds, so basically decide not to spend money that Congress appropriated. But again, it has to tell Congress and has to go through a process with Congress. Neither of those steps were what we're seeing this OMB memo take.

There's sort of a broader, somewhat gray area under which the executive branch can, "programmatically delay" the spending of certain funds. But it can't do that based simply on policy disagreement. So if the executive branch is going to, under the contours of budget law, delay spending funds, there are criteria under which it can do that, and simply disagreeing with Congress on policy grounds is not one of the permissible reasons for doing that.

And so you're right that Russell Vought during his confirmation hearings and elsewhere, has said that he believes this law, the Impoundment Control Act, is unconstitutional. I think that what we've seen over the past 36, 48, 72 hours, depending on when you're listening to this, is part of an opening play in what could turn into a broader fight over the constitutionality of the law. But what we've seen in the past couple of days, it is a fight about impoundment and it is a dispute about impoundment power, but it's also a dispute about other things, about other forms of statutory authority, about what are the kinds of tests that an executive branch can impose on federal grantees in terms of what they have to comply with in order to get federal funding, that sort of thing. So it's a broader debate about executive power.

PITA: In this question about executive power versus legislative branch power, you mentioned that it was a coalition of some nonprofits who brought suit. I know there was also a coalition of some state attorneys general who are kind of gearing up to deal with this. But in terms of this question of congressional authority, what did we hear from Congress about this? Did they have anything to say, any concerns from them about this encroachment into their authority over spending?

REYNOLDS: Yeah. So, we did hear from some congressional Democrats pretty loudly about the degree to which this is an encroachment in congressional power. So there's Patty Murray, who's the top Democrat on the Senate Appropriations Committee, so a very powerful person in this in this context, actually dating back to the Vought confirmation hearing highlighted the fact that one of the reasons why this behavior is problematic is because in order for Congress to reach agreement on spending decisions, everyone at the negotiating table has to believe that if they reach a deal in Congress and that deal is signed into law, that the executive branch will actually execute the decisions that Congress has made. And if they can't trust that, it's very hard to negotiate within the legislative branch over spending levels. And so we saw Democrats come out. We saw sort of a mixed reaction from Republicans. A couple of Republicans, you know, say they had concerns, say that this was overly broad. We saw some Republicans say they were supportive of this and say that, you know, this is the kind of thing that a new administration should be doing to make sure that spending is in line with the president's priorities. That includes the actual chairman of the House Appropriations Committee, who was not nearly as opposed to an encroachment on congressional power as you might expect. And so I think as we go forward, depending on kind of how things proceed, I do think it'll be interesting to watch the degree to which this fight, whatever form it takes, affects Congress's ability to negotiate over spending levels and to negotiate around other things like raising the debt limit that are hanging out there in the fiscal space that Congress has to have to deal with this year.

PITA: Are there any steps that Congress could take to put up some -- I feel like we spent the first administration talking about guardrails, now it's like sandbags -- around some of this authority? Would you expect to see changes in the way that maybe budget language is written or what kind of shape could that take?

REYNOLDS: So first thing I'll note is that while Mr. Vought has had his hearings for confirmation, the Senate has not yet voted on his nomination to be the director of the Office of Management and Budget. So I think one interesting thing to watch is whether anyone expresses their concerns about this trajectory in the form of their vote on that nomination. I think going forward, we may see Congress try to sort of exert some of its authority. But again, given the fact that, you know, some Republicans are supportive of this kind of exercise of executive power, and if fundamentally, what folks in the White House, where they're trying to go is a constitutional challenge to this law, I think that we may see this sort of escalate before it de-escalates. And that it'll be interesting to watch and see whether sort of this first move was just a very broad attempt to kind of gauge reaction and then whether what we see subsequently is a much more targeted kind of agency-by-agency effort. We'll just we'll just have to watch and wait.

PITA: Yeah, so what is it – there's a lot we're trying to wait and see what happens – what particularly, as you who are a congressional watcher here, in terms of this broader turf war between the executive branch and legislative branch about what's congressional authority and what's executive branch authority, what are some of the other things, some of the other moves that you're going to be looking out for?

REYNOLDS: Yeah. I mean, so this question certainly of like the continued debate over nominations and confirmations to folks to serve the executive branch kind of how that shakes out. And then again, are we going to see any members of Congress, you know, threatened to withhold funding for X, Y or Z because the executive branch is engaging in overreach? And the kind of recent track record isn't encouraging for Congress. But I think that, you know, this question of Congress's spending power and Congress' constitutional authorities here really is an existential-level question for the institution, and so it's really important. But I don't exactly know where it's going to go. And in the meantime, I'll also be watching the degree to which the kind of in-the-weeds decisions and operations, what does that actually mean, again, for individuals and organizations and governments around the country who really rely on these kinds of funds to meet their meet their basic needs and do the work they do on a daily basis.

PITA: All right, Molly, as always, thank you for being here and explaining things to us.

REYNOLDS: Thank you for having me.

PITA: I'm going to provide a link to some of your colleagues at Lawfare, provided a nice primer on the Impoundment Act, so we will include that in the show notes and anything else that comes out that helps explain what's going on. Thank you, Molly.