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No Take-Backs: Court Limits Agencies' Post-Award Grant Terminations

Key Takeaways

- A federal district court held that agencies may not rely on the Termination Clause under 2 C.F.R. § 200.340 to terminate awarded grants based solely on agency priorities adopted after the awards were made.
- The ruling may limit post-award grant terminations tied to changing agency priorities, but it does not reinstate funds or restrict agencies from revising priorities for future awards.
- Federal grant awardees should review their existing award terms and monitor any appeal, related agency guidance and proposed revisions to the federal grant regulations.

On July 17, the U.S. District Court for the District of Massachusetts granted summary judgment in favor of multiple states and the District of Columbia in their challenge to the administration's efforts to use the Termination Clause under 2 C.F.R. § 200.340 to unilaterally terminate billions of dollars in federal grant funding post-award.

How Agencies Relied on the Termination Clause

Specifically, the Termination Clause, as modified in 2024, provides that a "Federal award may be terminated in part or in its entirety . . . [b]y the Federal agency or pass-through entity . . . if an award no longer effectuates the program goals or agency priorities." Agencies relied on this provision to terminate existing grant awards after determining that funded activities no longer aligned with agency priorities — at times, directly departing from the original program goals. According to the plaintiffs, the government could not invoke the Termination Clause to terminate grants after award based solely on newly adopted agency priorities that were not disclosed at the time of award.

The court agreed with the plaintiffs, finding that the broader regulatory scheme of 2 C.F.R. § 200 did not allow agencies to terminate grants based on priorities adopted after the award, as various provisions require federal agencies to provide sufficient notice of their clear program goals and objectives prior to award. The court also found the administration's interpretation of the Termination Clause raised constitutional concerns

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under the Spending Clause, which requires conditions on federal funding provided to states to be “voluntarily” and “knowingly” accepted. *See Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1, 17 (1981).

What the Ruling Means for Federal Grant Awardees

Notably, the court's ruling neither reinstates any federal grant funds nor prevents agencies from changing program goals or priorities for prospective grant funding. The ruling, however, does limit the administration’s ability to terminate existing grant awards based solely on new agency priorities adopted after award. Federal grant awardees should review and continue complying with existing award terms and objectives and monitor related grant litigation and agency guidance, including the Office of Management and Budget’s recently proposed revisions to the federal grant rules.

We are closely monitoring these developments. For questions about how recent federal grants litigation or regulatory changes may affect your organization, please contact one of the authors of this eAlert or the Polsinelli attorney with whom you normally work.