CAPLAW Webinar Transcript

Legal Implications of the New Administration's First Moves: Executive Orders, Memos, and More (Part 2)

Date: February 12, 2025
Time: 1:00 - 2:15 pm ET

[Jonathan Cohen, CAPLAW]
All right, everyone, I think we'll get started here. Welcome to part two of CAPLAW'S webinar series about the legal implications of the new administration's first moves. Hopefully you all were able to join us in session one last Friday, where we went through quite a bit of material, and hopefully you've seen an email that went out yesterday with the recording for that webinar, as well as the slides, as well as some of the resources that were mentioned in that webinar. And so again, hopefully you've seen that, you've received that. And if you want to go back and watch us again, you can do that.

But this is part two. Essentially, as we had promised last week, the goal here is really to be guided by the questions that we received in that first session, and to focus on those questions. Because I know there have been a lot of questions that the network has about the administration's first moves, and we're going to walk through those essentially today. I'll just say really quick, if you still have questions, if there's anything you want clarity on that we discuss or don't discuss, please do put that in the chat and please do try to limit the chat to questions so that we can navigate that and see those as they come in.

But yeah, we're here to help as much as we can. If by the end of the session, we reach the end of our time and your question hasn't been addressed, or you still have questions, I just wanted to say CAPLAW is still here. We're always here to field those questions, and then please do send them in to us – either call us or email us, and you can speak with one of our attorneys, one-on-one through a consultation.

But we took the questions we received last time, and we've grouped them into a number of different broad categories. And the slides are really going to act, I think, as a guide for everyone as we walk through those questions and talk about them. And so here is what we will be discussing. There's myself, Emily Center-Bregasi, Savanna Arral, all here to work on these questions and walk you through them. We're going to be talking about some updates to the litigation that Savanna walked through last time, and what's been going on there. As well as the OMB Pause Memo – so what's the latest on developments related to those things, and answer some questions that we received last time about that, as well as issues we've heard in the network. Questions around drawdowns of funds, talking more about the executive orders and federal agency directives, questions we received related to DEI initiatives, as well as immigration, are two key topics that will be talked about. There are CSBG reports and data collection questions we received last time, and then some questions about something called the WARN Act, which I know you'll be very excited to hear about.

And so yeah, without taking too much more time with this introduction, I think we're just going to jump in because we, as I mentioned, we had a lot of questions that came in last time, and so Savanna is going to lead us off here with some updates on litigation.

[Savanna Arral, CAPLAW]
Thanks, Jon. I am going to kick things off by talking about questions that we received around the Pause Memo, cases that we discussed on Friday, and then give some updates on the state of those cases. Because we have so much to get to today, I might use and not completely explain some legal terms that you're unfamiliar with if you didn't join us last week. So hopefully you'll still be able to get the gist from this webinar. And if you need some more background information to kind of fill out the whole picture, you can check out the Part 1 recording and Allie from CAPLAW is monitoring the chat if that's something that you need. So next slide please.

Here's some of the questions that we got in this category on Friday. The first one is a fairly simple one, which is, "Why did only certain state attorney generals sue in the Rhode Island case, which is called New York et al. v Trump?" So in this case, the attorney generals from 23 states plus D.C. filed as plaintiffs. And as you'd probably expect, typically suits against the federal government brought by state AGs follow along partisan lines, red versus blue. However, I will note that Arizona joined this case as a plaintiff, along with states that you might expect, like Massachusetts and Colorado, likely because Arizona currently has a Democrat governor. This also feels like a good place to point out that although not every state's attorney general helped bring this case to court, the temporary restraining order that the court ordered applies to agency action regardless of state.

Second question, "What do the temporary restraining orders from these Pause Memo cases actually prohibit?" Overall, the temporary restraining orders, or TROs, as I'll refer to them, prohibit the Office of Management and Budget and the rest of the administration from implementing the Pause Memo or re-releasing it under a different name, and also requires the administration to instruct any federal agencies that received the Pause Memo about the requirements of the TROs and also release any paused funds. The Rhode Island, the New York et al. v Trump, TRO specifically states that if any pausing or freezing of funds is done by agencies, it has to be – and I'm quoting here – "on the basis of the applicable authorizing statutes, regulations, and terms."

I went into this more on Friday, but agencies have always had and continue to have the ability to suspend or terminate grants in certain circumstances under the Uniform Guidance or existing law. So the follow-up guidance also that was sent from the administration to federal agencies pursuant to the Rhode Island TRO further specifies to those federal agencies that they are not allowed to pause or freeze awards or obligations based on these Pause Memos or the underlying executive orders.

The third question, which is here on this slide, and I've already seen someone else ask in the chat, is, "What legal checks on the executive branch exist?" So, backing up just slightly, under the U.S. Constitution, the systems of checks and balances is in place to prevent any one of the three branches of government from taking full control or stepping outside of their bounds. And of course, this requires that every branch respects the co-equal power of the other branches. And historically, this hasn't always been guaranteed. American history, legal history, is pretty littered with examples of the branches testing each other's power and scope. The main tool that the legislative branch has to check the executive branch is really the impeachment power that's under Article I, Section 2 of the Constitution. This would involve the House bringing articles, also known as charges, against an executive official, and then the Senate conducting the trial with the Chief Justice of the Supreme Court presiding over that trial if the impeaching is of the President. The penalty for impeachment is removal from office and then also, sometimes, disqualification from holding future public office.

Also, many of the legal processes that I discussed more in depth on Friday have internal mechanisms that include some form of review or check. For example, the Government Accountability Office is tasked with

monitoring the executive branch's compliance with the Impoundment Control Act, which would include the GAO suing in court if necessary for the release of appropriated funds that have been improperly impounded.

And as we've seen, individuals and organizations can also check the executive branch and its agencies via lawsuits in the judicial branch subject to the federal courts finding that procedural requirements like sovereign immunity and standing to sue are fulfilled. So once a court makes an order like the TROs that are in place, or something like a preliminary injunction, failure to comply with the court's order can result in what's called a contempt of court finding, and that can come with civil or criminal penalties. However, I will say it's fairly normal for the courts to use contempt as a last resort way to force parties to comply with their orders. They tend to start with things like admonishing the parties or their attorneys publicly or filing more specific enforcement orders first.

And then finally, for questions that we got last week is, "Is the Loper Bright case from last year relevant to the Pause Memo cases?" This is really just a moment for clarity, although they both involve agencies – the Pause Memo cases and the Loper Bright case – and if you're not familiar with the Loper Bright case, we do have an article on CAPLAW's Resource Library that goes into it more.

But although they both involve agencies, there's some important differences in the recent cases about the Pause Memo from this case last year, which is really about deference to agencies under the so-called Chevron doctrine. So the Chevron doctrine and the recent Loper Bright case are applicable where an agency's regulatory action is challenged in court, and those cases guide the scope of the court's review and power over that part of the executive branch. The EOs and the Pause Memo cases, on the other hand, are about a directive from the head of the executive branch to other parts of the executive branch. So it's about an order from their boss.

Where these things can, I think, collide, is in the event that a federal agency were to create a regulation as a result of orders in an executive order or presidential memo, the court could rely on Loper Bright as a mechanism for reviewing that regulation within the context of the power that the agency has to create. Lots of legal words to basically say it would be a battle in the courts about whether the agency had the authority to create a regulation like that. So two separate things, but nice connection that somebody made last, last Friday. Next slide please.

And then here are the status of the two cases that we went over on Friday. And then one question that we got on this topic is, "How can we track the progress of these court cases or the new executive orders?" So for tracking executive orders, the National Council of Nonprofits website has a pretty great hub, which we can include the link to somewhere. But you can also find executive orders on the White House website, if you prefer them straight from the horse's mouth. And then most executive orders and presidential memos also likely end up in the Federal Register, which has a landing page specifically for presidential documents. Again, if you just google "Federal Register presidential documents" that should pop up.

Unfortunately, outside of following the general news cycle and hoping that journalists link to docket filings hosted on their servers, there isn't really an easy way for regular people to track the progress of court cases without access to PACER or another litigation database. PACER is the litigation database, and it's paid – it costs money. The district court in Rhode Island, however, has very kindly provided a very streamlined version of the docket in New York v Trump on their website so you don't have to sort through all of the scheduling and random notices that also sit on a litigation docket. So the website just gives you like the meat of the matter. I don't think anything similar has been done in the D.C. case yet.

On to the most recent news in D.C. in the Council of Nonprofits case, the court issued an order that scheduled a hearing for a preliminary injunction on February 20 at 11am. They also said that the public will be able to listen to this hearing via phone conference. The order also keeps the TRO in the D.C. court case in place until what's called further order of the court, meaning that the TRO will stand until it's lifted, or a preliminary junction is put in its place.

In Rhode Island, things are a little bit more complicated. So since Friday, the attorney generals filed a motion to enforce the existing TRO, which included evidence that the Trump administration had in fact not been complying with the TRO, as well as a motion for a preliminary injunction, the next step after a TRO.

So two things that happened: the first is that the court filed an order enforcing the TRO and directing the administration to immediately restore frozen funding and any federal funding paused and take every step necessary to effectuate the TRO. Second, the defendants in the administration filed a notice of appeal to the first circuit. So the district court case in Rhode Island exists right now, First Circuit is up one level, and up after the circuit courts is the Supreme Court.

In that notice of appeal, the administration requested what's called an administrative stay of the TRO and other pending orders. Typically – and you might have seen this in some news articles – TROs are not usually appealable, but there's some there's some fun legal mechanisms that exist under the Federal Rules of Civil Procedure and also federal court practice that likely makes this a valid appeal. Yesterday, the First Circuit denied the defendant's motion for an administrative stay, meaning the D.C. TRO and the Rhode Island TRO are both still in place. Alright, next slide, please.

So next up, we got some questions on Friday about the Pause Memo itself, and also some related topics on the legal framework around appropriations. So next slide please. The first question is, "What does the Pause Memo actually apply to, and is CSBG funding part of the freeze?" Now we went over this a little bit on Friday, but just to pull some language directly from the memo itself, which you can find online or in the news alerts that we sent out – was it last week? Maybe two weeks ago at this point.

So on its face, the Pause Memo applies to all activities related to obligation or disbursement of all federal financial assistance and other relevant agency activities that may be implicated by the executive orders. A Q&A that was released by the Office of Management and Budget following the Pause Memo stated that that pause didn't apply across the board, but was expressly limited to programs, projects, and activities implicated by the executive orders. That Q&A also stated that any program that provides direct benefits to Americans is explicitly excluded from the pause, and they named Social Security, Medicare, Medicaid, and SNAP as well as funds for small businesses, farmers, Pell Grants, Head Start, rental assistance, and other similar programs.

However, when the Pause Memo was sent to agencies, it was accompanied by a spreadsheet of what were labeled "frozen funds" with a cover sheet of instructions. And that document did include CSBG, Head Start, LIHEAP, and other programs that are implemented by the Community Action Network. So as I am saying this, this is just a reminder that there are two TROs in place that prevent the implementation of the Pause Memo, and the administration has purportedly rescinded the Pause Memo anyway, just to be very clear about the status of things, but somebody did want some more clarity on what the Pause Memo said.

Second question here kind of specific but, "Is congressionally directed spending/earmarking impacted by the Pause Memo?" There's a lot we could go into here, but basically, congressionally directed

spending, or earmarks, are federal funds that members of Congress request be set aside for projects in an area they represent. Earmarks have been – on and off – banned by Congress over the last several decades, but they weren't banned for the 118th Congress, or, I believe the current 119th Congress.

Without going too much into it, to the extent there are what are called hard earmarks in an appropriations act, they can be impacted by the Impoundment Control Act procedures to the same extent as any other appropriated but unobligated federal funds. And then with regard to the Pause Memo in the ongoing court cases, my understanding – and I'm not an expert in this – is that earmarks are usually paid directly to the organization that's named in the earmark so they bypass federal agencies completely. If the earmarked funds are funneled through an agency, however, it would stand to reason that the TROs would apply, meaning that agencies could not freeze those funds based on the Pause Memo or the executive orders.

The third question we got is specific to impoundment. So, "What votes are needed for a congressional response to impoundment?" The Impoundment Control Act, which we discussed in detail on Friday, includes an entire section on procedures for Congress to review and implement what are called a rescission bill or an impoundment resolution, in response to a President's special message to impound funds. Because the ICA explicitly limits all debate in the Senate, including motions and appeals during that process, the filibuster procedures and the cloture requirement of 60 votes to end debate don't apply. This means that passing a rescission bill or an impoundment resolution in either the House or the Senate then should be by simple majority.

And then finally, this is why the "etcetera" is on this slide: "What is happening with DOGE?" So DOGE, the Department of Government Efficiency, is a reorganized version of the U.S. Digital Service, which sits within the Executive Office of the President. There's a lot going on about DOGE in the media, and there's lots of outstanding legal questions about DOGE's role and authority in the federal government, including things like how it'll be funded, whether the staff are subject to ethics and conflict of interest rules under statutes like the Ethics and Government Act and whether the Federal Advisory Committee Act applies to it. But at the end of the day, I think the big thing that we wanted to get across to you is that the issues with DOGE are occurring at a level that is somewhat above what we do as a network. So while the effects of DOGE's work may trickle down to us, the fights that are about DOGE are really more about the structure of the federal government than they are about anything else more specific to what we do as a community.

So that's a lot of information, and I'm seeing a lot of questions in the chat. I do want to make sure we get to everything that we wanted to talk about today, so we'll take a look at those, and hopefully have some time at the end to answer some clarifying questions. I think I'm handing it back to Jon here.

[Jon]
Yeah, thanks, Savanna. It was great information, and I will get now into some of the questions related to drawdown issues that we received last time around.

We had a question from last time that essentially was, "Have CAAs been experiencing frozen funds?" and there was quite a bit of response to that, just within the chat last time as well, just with experiences of CAAs who are on that webinar – on that call – who had been experiencing some delays, or some frozen funds. And so I wanted to say a few things in general related to that. So one – of course, you know, we have heard, certainly in the last webinar, as well as elsewhere – CAAs are still experiencing issues receiving funds. One of the areas that we have heard that are what have been sort of termed overdrafts for Head Start programs. This was essentially – we heard of incidents where Head Start

programs were trying to draw down funding, maybe more funding than usual, and so there had been delays caused by that particular practice, where the administration was essentially taking a longer look at those requests, at those, you know, "overdrafts", and doing them manually as a result. And so there were delays there.

And when thinking about this, it gets to a couple issues. One is this notion of how much is being requested for a particular drawdown. And so we wanted to highlight the Uniform Guidance here and just mention some regulations that are there related to payments for recipients and separate sub-recipients other than states. So let's say your Head Start program, or your organization, is trying to draw down funds for its program, and it needs to be mindful of these regulations. And these in particular live in the general Uniform Guidance at 2 CFR, 200.305(b). And that essentially says, for recipients, subrecipients, other than states, payment methods must minimize the time elapsing between the transfer of funds from the federal agency or the pass-through entity and the disbursement of funds by the recipient or subrecipient. And essentially, what that means is you have to be mindful of timing with regard to how much you're drawing down and requesting and when you're going to be able to get that out and use that in your programs.

And this is sort of a common theme as well when we get down to the state's role in funding distribution in that there's concern in the regulations, essentially, for the timing of these things, and making sure that it makes sense in the time between when that's being drawn down and when it's being used is minimized, and that those types of drawdowns are essentially taking what's usable, sort of in the more immediate term. So immediate cash requirements.

And if you go on, I won't bore you with the Uniform Guidance regulations. You can take a look on that citation I mentioned, and the subsequent subsections talk about things like advanced payments to a recipient and limiting the amounts needed in a similar way. And, you know, limiting it to immediate cash requirements. And so that could have been that issue with overdrafts for Head Start, is just the requests were for too much in the context.

We did get some questions as well about BIL funding, and the fact that essentially CAAs experienced frozen funds related to BIL. So that, I think, relates to one of those executive orders that was about unleashing American energy, and within that, talked about the administration doing a review of programs that were essentially funded by BIL so that they weren't being essentially used for priorities that were outside the scope of what that executive order was saying, which was essentially not providing preference for Green New Deal programs and green energy programs and things like that.

And so, you know, according to the OMB memo-related litigation, according to what Savanna was just saying, funds should not be paused pursuant to what was in that OMB memo. Just know that at the outset – those shouldn't be paused according to that.

However, as Savanna did mention, pausing on the basis of a particular authorizing statute or regulations or terms in your contract, that's still something that the administration is able to do. And so it sort of gets at the point – what's the reason for the pause? And then, if you're not hearing anything related to your frozen funds, related to BIL, and then that's difficult to determine, and I certainly understand the frustrations there. So trying to seek clarity on that, if possible, maybe with states or someone who's working on that in that program could be an option. There's also just the option of seeing what the response to the developments in the litigation is related to that. And so I just wanted to sort of float those out there as well.

We got some questions about the state's role in funding distribution as well. And this gets at what I was saying with regard to the Uniform Guidance provision. There are provisions in the federal regulations related to states drawdown funding from the Treasury. Essentially, you see through 31 CFR Part 205, listed there – that's where those regulations live – and they have similar wording and similar provisions to what I mentioned in the informed guidance. Essentially, state drawdowns also must minimize the time between drawdown and disbursement, minimizing that time – having enough there for the immediate cash need. And so that is sort of why, for example, a state couldn't just draw down all of its funding for the year for a particular program. Because, you know, it has to be mindful of that in the regulations. And so 31 CFR Part 205 is where that lives.

We got a question about carryover as well in the last session, and what impact all of this might have on carryover. And I think the answer to that is it should not have an impact on CSBG carryover funding. Carryover for CSBG is something that has been included in the appropriations bills for a number of years, explicitly saying that carryover is allowable, shall remain with the CAA for it for carryover further into the next fiscal year. So again, that's in the Appropriations Act, and has been for a few years. And so that should be protected, in a sense. So that is something that should be available to organizations.

I will move along now and pass along to Emily, who's going to talk about executive orders, DEI and federal agency directives.

[Emily Center-Bregasi, CAPLAW]
Thanks, Jon. Hi everyone. Thanks for coming back and joining today.

I'm going to dive into your questions from last week on the executive orders, starting with the DEI executive orders, and then touching briefly on a federal agency directive as well. And so as a brief recap: as we all know, there have been a few recent executive orders on the topic of diversity, equity, and inclusion. Both of these orders on this page here direct the end of illegal DEI and DEIA programs, activities, and policies.

So in relation to that, we received one question about whether "illegal DEI" and "DEIA" has been defined. The answer to that question, unfortunately, is no. What constitutes illegal DEI hasn't yet been defined. With that being said though, we know that the administration is emphasizing the elimination of preferences and discrimination, largely around the topics of race and sex, and we do know that there are likely to be some trigger words which DEI review would include, you know, at minimum, the words diversity, equity, inclusion and accessibility themselves. But that "illegal DEI" phrase has not yet actually been defined.

Another question we received was, should CAAs stop their affirmative action plans? One of the executive orders here at the bottom revoked a prior executive order and its amendments, and that prior executive order and its amendments required affirmative action plans for government contractors. While all CAAs are sub-grantees, not all CAAs are going to be federal subcontractors. So, if your CAA was a federal contractor required to have an affirmative action plan previously, that requirement has now been removed, and you can stop fulfilling those federal contractor affirmative action requirements.

But I want to point out that the key here is really to know why you had an affirmative action plan in the first place. So, if it was because you were required to as a federal contractor, you can end that plan. This EO got rid of that requirement. If you had an affirmative action plan for other reasons, or if it was a requirement incorporated into an agreement of some sort, check in with that funding source to understand and determine next steps. And along those lines, also be aware of potential state laws in

this area. If you're required to have an affirmative action plan under state law, seek the guidance of a state attorney to help navigate that.

And then, along those lines in talking about state law, another question we received a few times that I wanted to reference while we're on this slide, is, what if state requirements differ from the federal executive orders and directives? States, you know, are permitted to make their own requirements around contracting, but if your state contract or sub-grant agreement directly conflicts with federal law, you should try to get in touch with your state to understand what the next steps should be. For example, if your state is passing through some federal funding to you, it's possible that the state is actually planning to update certain language in those sub-grant agreements. So do reach out to your state and try to stay in touch with them.

You know, in a similar vein to what we dealt with during the pandemic, with different vaccine requirements at the state versus the federal levels, this conflict between federal mandates and state laws, or federal EOs and state laws is likely to result in litigation. So, it can be hard to predict whether a court will actually interpret two laws to directly conflict with each other, but you all should be prepared to comply with federal requirements. Next slide, thanks.

While we know there's a TRO in place indicating that funds can't be terminated or paused due to the executive orders, including those EOs on DEI as Savanna talked about, it does seem clear that DEI is going to remain a focus of the administration moving forward. So, with that said, we walked through a potential framework for considering any DEI related or DEI adjacent activities in last week's webinar. As a reminder, we recommend that your agency first review any potential existing DEI initiatives – ideally that's with an attorney – and also review them for their compliance with existing law, such as anti-discrimination law. Then we also recommend that you assess the level of risk your organization's comfortable with moving forward. And based on that assessment, you might decide to make certain changes to those DEI policies. You might decide to remove certain DEI activities, or to keep moving forward as you are.

And next slide – it seems a lot of you are already engaged in this type of thought process and working through this framework, because we've received lots of questions about whether certain activities should be refrained from or whether they would be considered DEI. So, for each of these questions we would consider working through that framework on the last slide and conducting some risk analysis, which would be specific to you and your organization. I did want to speak to each of those topic areas briefly on this slide.

The first set of questions were around whether increased pay for bilingual employees or preferences for bilingual employees could continue. The answer to this question is generally, yes. You can continue any necessary bilingual candidate searches or specific pay scales if your organization requires multiple languages in certain jobs or prefers bilingual candidates that are going to be able to use that skill in the workplace. It's hard to say what might be triggered by potential reviews of the government of DEI activities, but it's likely that the strong tie here to a need in your organization for fluency in those languages will be factored into that analysis. So, under existing anti-discrimination laws, you're permitted to provide bilingual pay and to search for bilingual candidates. We'd recommend ensuring that, where that's the case, there should be a business purpose, so meaning those bilingual employees should be using their language skills in their job regularly. And we also recommend you put the policy in writing, especially if you're paying bilingual employees differently from other similarly situated, but not bilingual, employees.

And then, in a similar vein, we received a question about whether CAAs can provide questionnaires in different languages for clients. Again, if this is needed to reach your community and to serve low-income populations to your best ability, you should, yes, continue putting out communications to those clients in the languages that they need. Again, focus on serving your low-income communities, providing services to respond to your community needs assessment. If that means sending community questionnaires in the primary language of your community, continue serving them by doing that. And in some cases, it's worth noting, it's actually legally required under federal law to provide certain documents in clients' first languages. So sometimes translating those documents might actually be not only permitted but legally required.

And then another topic of questions we received were about DEI positions and titles and whether a CAA should consider changing those employee titles that include DEI-related words. Again, currently, the TRO prevents federal funders from stopping any funding in connection to those DEI EOs, but again, it's likely that DEI is going to continue to be a focus. So, in this case, the safest approach might be to reframe those positions. If the position is not only focused on DEI, but also – for example – focused on serving and conducting outreach with your low income communities, you might decide to reframe that position title to still accurately represent what that person is doing and what their work is, but to focus it in a different way and stay away from certain DEI trigger words. Once again, this is within that framework, up to your own level of comfort with risk, right, and it might also depend on what funding source that employee's salary is funded through. But if you want to be cautious, try to consider whether an alternative title could still accurately represent and describe that employee's work.

And if you decide not to change employee titles, consider what funding sources are paying for that employee's salary. If DEI becomes an unallowable expense under certain federal awards, consider what funding is supporting those positions or activities related to DEI. You know, again, you can consider – similar to employee titles – reframing some of that work or those activities in a way that's truthful to the activity, but in a way that could still be supported potentially by certain grants like focusing on that connection to low-income communities served. And you might also just, at the end of the day, need to reallocate salaries so that they're only paid with those funding sources that permit those activities.

And then next up, some questions about employee pronouns, those that are used by staff or in email signatures. The executive orders on DEI and gender didn't get this specific as to speak to this in particular. It's currently legal to have pronouns in email signatures. And so, with that said, again, it's up to your agency's comfort level on the topic and level of risk you believe would be associated with that. If you're worried about attracting unwanted attention, you could choose to include pronouns in signatures only internally and not maybe in external emails, for example, that could be one option you move forward with. But generally, when you receive funds, you do have to comply with any regulations associated with those funds. So, if you're going to accept funds moving forward, do make sure that you're going to be able to comply with their requirements. But currently, the executive orders are more so focused on preference and discrimination, and not so much in this identity area, in this way.

And then I wanted to touch on the next set of questions in this area, which were around holidays – so whether a CAA should be concerned if they're listing, for example, Indigenous People's Day or Juneteenth as a holiday at your organization. We're not necessarily recommending changing up your holiday schedules at this point in time, the administration did acknowledge Black History Month, for example, and Juneteenth is still a federal holiday. We believe it should be acceptable to keep those holidays for your employees.

One thing to consider, though, is what holidays are and are not federally recognized holidays that could change potentially. So if your policies right now say all federally recognized holidays are provided as

holidays to employees, that could change as a result. We don't know this for sure, of course, but one thing to keep in mind if you want to continue providing certain holidays like Juneteenth, let's say, is that you could list out all dates of the holidays that you'll provide off to staff. So, listing the dates and the holiday names, as opposed to referencing federally recognized holidays. That could just be one safe option, but at this point, we don't necessarily recommend changing up holiday schedules.

And then the last bolded item here to consider in this space would be what you're putting forth on your website. So, with that in mind, I want to talk about a sort of related topic we received questions on which were related to the request a lot of you received from OCS to add or include certain disclaimer language on your website. This language is again not specific to DEI, but I want to take a moment to talk about it here. So, for those of you that aren't familiar this is referencing a message from OCS that asked all sub-grantees to include disclaimer language on their websites that essentially indicates that resources on the website are supported by their CSBG grant, but do not necessarily reflect the views or opinions of ACF or OCS.

And so with respect to that communication, our recommendation would be if you have any CSBG dollars – whether those are direct or indirect – supporting your website or if you're promoting services that use those dollars – a version of this disclaimer should be incorporated into your website. If you're concerned though that maybe other funding sources also support your website, the language could be updated, for example, to add "in part", which would basically indicate that CSBG or other named funding sources don't fully support your website, but support the website in part. If no federal dollars are supporting your website at all – and that would include paying for employee's time that they spend working on the website – you could choose not to include the disclaimer. But even if any indirect federal dollars are supporting your website, or if you're promoting those grant-funded services on your website, we'd suggest including the disclaimer language.

And then I just want to provide some context as to that request. Similar disclaimer language has already been a requirement in HHS grants policy statements for some time. So while this was a requirement previously, there seems to be this recent increased interest in enforcing this. We suggest adding this disclaimer language because not doing so might draw unwanted attention at this point. Next slide.

Alright, so the next EO topic we received a lot of questions on was immigration. Next slide. As a recap, this executive order sets out the policy of the new administration that they're going to faithfully execute immigration laws against undocumented immigrants. That includes directing the review of federal grants that provide services to undocumented individuals for waste, fraud and abuse, and to ensure that those grants aren't encouraging violations of immigration laws. And so we received a question related to this, which was whether CAAs can conduct immigration trainings or provide immigration resources. The answer to that is yes, you can conduct "Know Your Rights" trainings, generally. The EO directs the AG and the DHS Secretary to review federal grants to ensure that they don't encourage violations of immigration laws. Educating people about their rights under the law is not a violation of the law. Consider what funding you're using to pay for the training and consider the funding source's position, but you are permitted to conduct these trainings generally.

And then the EO also directs OMB to make sure that all federal agencies stop the provision of public benefits to undocumented individuals that are not authorized to receive those benefits. This then raised questions for some of you on the last webinar about what services CAAs can provide then to undocumented immigrants. Head Start and CSBG services may currently be provided to undocumented immigrants. That's because undocumented immigrants are eligible for those services. CSBG and Head Start don't have any immigration restrictions. What that means is you're not required to check or collect immigration information before providing those services.

In terms of other services that have some immigration restrictions to consider, like HUD Public Housing, Section 8, LIHEAP, or Weatherization, we have a lot more information on eligibility in our Immigrant Eligibility resource that we sent out in PDF format following the last webinar, and I'd suggest you read through that Immigrant Eligibility for Public Benefits resource for more information. If we don't cover a benefit that your agency provides, also maybe turn to NILC, again that's the National Immigration Law Center. They have details about even more programs.

But I wanted to say a few things about what you'll find in that resource, which is that even where certain benefits can't be provided necessarily to undocumented immigrants, there's lots of cases in which services could be provided to eligible immigrants that happen to live with non-eligible household members. Usually, services like LIHEAP would need to be pro-rated such that they're benefiting only those that are eligible in the home. But if there's ineligible individuals in that home not receiving the service, you do not typically need to collect immigration information on every household member if you're not going to be providing services to them. So that's something to keep in mind. LIHEAP also indicated in a recent IM in 2023 that if services can't be prorated only for those eligible household members, let's say for the purchase or the repair of a heating unit or an AC unit, those services can be provided in full, even if only some of the household members are eligible while others are not. Next slide, thanks.

So last week, we discussed what to do if ICE comes to your workplace. Again, to recap, we generally recommend four steps. The first is to understand why they're there, either for a form I-9 audit or an ICE raid. The second step would be to know your rights in both public and private areas. And we'll get into that a little bit more on the next slide. We received lots of questions on that one. The third is, stay calm. And then four, record everything that happened. And we received one question in particular that I wanted to address on this slide, which was, "are we allowed to record ICE?" Yes, you have the right to record ICE in public spaces or in your workplace. You can ask staff to film ICE if they're comfortable doing so, but you can't interfere with ICE's activities. So, make sure you comply, for example, if ICE asks you to back up when recording.

And then, as I mentioned, one of the big questions that arose when we talked about potentially interacting with ICE is whether certain spaces are going to be considered public or private spaces. As a reminder, there's different protections with respect to public versus private areas. The important distinction here is that ICE can only enter private areas if they have your permission or a judicial warrant. On the other hand, ICE can enter public areas without any permission. The difference between what's a public space versus what's a private space is based in constitutional law. It's established further through case law, so usually it's a really fact-specific, determination between public and private. But there are some general kinds of features that we can talk through today.

For private areas, usually there will be some sort of restricted access or control over entry and exit into that space. This could look like having a security guard, locked doors, doors that require a badge to enter. Another characteristic that could be considered, but isn't necessarily determinative, could be having signs indicating that the space is private. While signage isn't the only deciding factor, it could be one that's considered in that fact-based analysis, which means in favor of the space being private. And some common private spaces would include potentially homes or classrooms.

On the other hand, public areas. Some characteristics that would indicate the space might be public would be that the space is open to the public, has frequent high traffic, there's a lack of control over who's exiting, who's entering the space. Sometimes having the space visible from the outside can also lean towards the space being considered public. Though again, alone, that's not likely to be

determinative. Usually, there won't be any restricted access or badge doors here to these kinds of public areas. They'll more so be open to the general public to come and go as they please. Typical public areas then would include things like lobbies or waiting areas.

With that review of private and public areas, I wanted to turn to some of the more specific questions we received on this distinction. One question we got was, what should a CAA staff member do if they encounter ICE while they're visiting a home? A home is a private space, so ICE cannot enter a home without the occupant's permission or without a judicial warrant. So, advise staff that they do not have to open the door to the home. If the door is opened or ICE insists that they have a warrant to enter, staff should ask to see that warrant and make sure that it's a judicial warrant. We'll talk about reading those warrants a little bit more on the next slide as well.

And then we received some questions with specific details of certain CAA spaces that you all are wondering about, including certain lobby or office areas where it's kind of unclear if the space is private or public. And for those, I wanted to just reiterate that this is a fact-based analysis, based in case law. So it's really hard to say for sure, but what we do know is that having controlled access to enter and signage indicating the space isn't public, that's going to start leaning further towards the space being considered private, right? So even if it's technically a lobby, for example, it could still be considered private if a lot of those characteristics exist. Signage alone, though, probably isn't going to be determinative if the rest of the space appears public through all the other characteristics. So just keep these factors and characteristics in mind if you're trying to understand ways you can make a space more private, or whether spaces in your organization are private. Things like making doors badge-access only, having a security guard stationed there, adding signs that the space is private.

And there were also lots of questions on Head Start classrooms too. I wanted to address that briefly. In general, a Head Start classroom will likely be considered a private space. Of course, still keep those common characteristics of private spaces in mind, but if the classroom is restricted to access only to students and staff and maybe to other individuals on a case-by-case basis – like visitors or parents – it's very likely to be private and ICE therefore cannot enter without a judicial warrant.

And then we received a question about open sightlines and whether that might make ICE more able to go into private spaces. Having a space visible from outside areas is one characteristic of a public area, but again, alone, it's likely not going to make a private area public. So again, all these characteristics need to kind of be taken together. If the space does have open sightlines, but it has restricted access and has control over who enters, has badge doors, it could still be a private area. And then if that space is considered private, ICE can only enter with a judicial warrant. So having open sightlines to an otherwise private space does not necessarily give ICE any additional rights to enter that private space if they don't have that judicial warrant.

And then I believe Jon was going to address just one question we received here, additionally on this topic as well.

[Jon]
Yeah, thanks, Emily. I'll be real quick. We received a question last time about how to handle employees that may give ICE permission to enter private areas – either willingly or accidentally – and how do you handle employees that might do that? And so I think with regard to this, this really speaks to the importance of having a plan in place and a policy in place that essentially takes this decision out of the hands of an employee, an individual employee's discretion. And so this gets at some of those things that we've talked about, I think before, about have a point of contact. If ICE does arrive, this is the person who employees know is going to be the point of contact for them and is understanding how to

communicate with them.

And really, again, make sure that you've communicated this policy, this plan, to all of your employees so they understand what the plan is in this type of situation. In that case, if that policy, if that plan, is ultimately not followed, then the response to an employee who essentially violates this policy would be similar to when another employee violates, you know, other policies at your agency. They would be subject to the same types of discipline that violations of policies warrant in that case.

I'll also just mention here as well, you know, a warrant-specific angle here on public versus private spaces, and understanding within your agencies, amongst the employee who has the right to essentially grant permission or grant access to private spaces is another important component to communicate and understand when you're thinking about your policies and plans in this area. And I think it's back to you. Emily,

[Emily]
Thanks. As we just discussed on that last slide, you know you're not required to give permission for ICE to enter those private areas if they don't have a judicial warrant. So that brings up then questions about what a judicial warrant is, and what the judicial warrant gives ICE access to actually do. Briefly, a judicial warrant should be signed by a judge, and it should say either a U.S. district court, or a state court. At the top it should indicate the court that it's coming from. On the other hand, administrative warrants, which are sometimes used to try to enter by ICE, do not suffice here. Administrative warrants might say something like the Department of Homeland Security at the top, but they won't be from a court. And if it's not from a court, ICE can't use it to enter private areas of your organization.

And we did receive several questions about what to do if ICE does have a warrant. So, for example, do you need to bring any listed individuals on the warrant to them? And I wanted to talk about those questions briefly. First, it's really important to read the warrant entirely. Ask if they have a copy of the warrant, and read that entire warrant. If ICE shows you what is an administrative warrant, as opposed to that judicial warrant with an employee's name on it, you do not have to say if they're working that day or not, and you definitely don't have to take ICE agents to that employee directly. If it is a judicial warrant, take some time to look at exactly what that judicial warrant is authorizing.

Some questions to ask yourself as you're reading that warrant would be, does it list that individual's proper name? Does it state the correct address of your organization? Really take your time reading and reviewing that warrant. It's actually, seemingly relatively rare that ICE shows up with a proper judicial warrant with individuals and location properly indicated, so have staff take their time reading through those judicial warrants, and that will indicate exactly what ICE is able to do and not to do in this space.

But if you read the warrant in full, it seems to truly be an accurate judicial warrant giving ICE that authority to search for, let's say, a particular individual – generally speaking, you are not required to assist ICE in gathering individuals up for them. At the same time, you also shouldn't prevent ICE from doing their jobs. So, there's this fine line between not being required to assist ICE by bringing people directly to them, but also not necessarily getting in their way as they search for that individual.

And as Jon just emphasized, you should have a policy in place that discusses how your staff are going to respond. Have someone or a few people on staff that should be contacted if ICE shows up, and then have those few people trained more extensively in terms of understanding what the judicial warrant looks like and being able to actually read through and understand what rights that warrant gives to ICE. And you know, in that way, not every employee necessarily needs to be intimately involved with each of those details, but every employee should at least know what their directive is if ICE shows up. And

with that, I'll pass it off to Jon to answer a few other questions about what can and can't happen if ICE has a warrant.

[Jon]
Yeah, thank you, Emily. I'm going to sort of approach this in the context of a question we received last time about what data is ICE allowed to have access to. Let's say they show up and they want, let's say, client data. What should you be thinking about in that context? And you know, first and foremost, I'll mention, CAPLAW does have a resource about client privacy and privacy with their data, and I would encourage you to take a look at that on our resources page, as that contains much of what I'm going to say.

But if ICE does show up, if they are requesting information about a client, you know as a CAA you should not assume that you must provide that information to them. Instead, inform the officer, inform whoever shows up that a client's data is subject to numerous confidentiality requirements and that the officer must either provide a subpoena for that data, or if they intend to search the organization, a warrant. And Emily just ran through the two types of warrants that you should be looking to differentiate between and what each of those may require. But if ICE does produce one of those documents, then you should, as a CAA, ask your attorney to review the contents of a subpoena or warrant, if you can, before providing that type of information to them really, to ensure that they're being properly issued and determine the scope of the information requests. I think, in general, you should be trying to, if it is a valid subpoena for information, then you should aim to provide, you know, the most limited amount within the scope of what that subpoena is, or court order is requesting for client data. And again, if you can, please consult an attorney for advice on that as well.

I'll also say that different programs may have different requirements around this. For example, Head Start has Performance Standards that talk about the procedures to protect personal identifiable information and how the requirements around disclosure of PII from child records without parent parental consent. And so within those standards, it does talk about compliance with the judicial order or lawfully issued subpoena, but the program in that situation would have to make reasonable efforts to notify a parent about that type of subpoena. So just be aware there are programmatic restrictions as well to keep in mind on the release of client data.

I show this slide here to sort of talk about subpoenas. But Emily ran through judicial warrants versus administrative warrants. I think judicial subpoenas versus immigration subpoenas can be thought about in a similar context. So you see, and hopefully this is helpful for you to take a look at, you see on this table that judicial subpoena is issued by a court, signed by a magistrate or assigned by a judge, states name of a person or address. And with regard to those, similar with the warrant, compliance is always required, unless it's missing the above elements. When we're talking about an immigration subpoena, it's issued by DHS. So you're looking for that type of seal, label, number, signed by an immigration judge or officer. It has the title like Immigration Enforcement Subpoena and states U.S. immigration laws as the authority. But for those, compliance is not required unless there's a separate judicial order that requires it.

And so thinking about this in the context, if ICE does show up and they present you with a subpoena, well, what's the type of subpoena that they've given you? Judicial? Then yes, you must comply. If not, then no, and take a step back. You know compliance is not required in that situation.

And then just some more support for what I mentioned about those funding source requirements – the Head Start example. And there's also LIHEAP Block Grant. There's no real federal laws or guidance

about the protection of data for something like that, and there may not be for some of your other federal block grants and federal programs. So you also need to be aware of state laws as well and what protections might be there with regard to protection of information.
I am going to talk about a few questions now related to CSBG reports and data collection that we received last time. And you can see them here – we put a couple of questions on this slide. I know that there was a notice or a directive sent from OCS to some CAAs about the annual report. And essentially what that notice was saying was that OCS was working on the annual report. It was going to replace a few things on there and delete a couple things as well. So they were going to replace the term gender with the term sex, and then they were only going to collect two options for information collection, male and female. And then within the annual report as well, within that notice, they said they were going to remove references to equity. So I think there were two references to equity within the report, and they're taking those out. And then, you know, those updates for data that was going to be collected prior to March 31, 2025.

And so I think when you're thinking about this as a CAA, really the question is what does this mean for me? I'll start by saying something that I think Emily mentioned – your CSBG funds for example, your federal funds, are funding that the federal agencies are giving to the organization, and receipt of those comes with having to comply with the requirements that are related to that funding. And so if this is the information that OCS is now sort of wanting to frame their data collection activities as then this is essentially what they're doing now.

And I think so there is a process for information collections at the federal level, and an approval process when there are substantial changes to information collections and data collections. Whether or not this would rise to the level, I'm not sure. It appears that OCS with this directive, is starting to go through the process of that and so consider that. And consider the fact that when you're collecting data, if you want to use your federal funds to do that, then that collection ultimately will have to be in-line with what the federal agencies are requiring here. And they appear to be on the road to requiring some new information for that collection. So keep that in mind.

I'll also say we got a question about, "should CAAs change their data collection in response to this?" Certainly if you're paying for it with federal funds, you'll want to keep this in mind, because that could impact whether or not you're able to do that, if you're collecting and reporting in such a way that the funding sources have told you not to do. However, if you're using unrestricted funds, if you're using other funds for this, I would say that CAAs could continue to collect data in the ways that they think is best, and they think that makes the most sense for them. And so I would say that there's that consideration as well, when you're thinking about this as an organization, and how best to sort of assess the data you're collecting or the populations that you're serving. And so consider other ways to get the information you're currently getting. Is there a way, you know, through other sources of funding, there? I will pass it along now to Savanna, who, as promised, is going to talk about the WARN Act.

[Savanna]
Me again. Our final topic for today is the WARN Act. And then I'm also going to – because I know we're supposed to be done at 2:15 – I'm going to try to rapid fire go through some of the questions that I think are easily answerable in the chat. Next slide, please.

So the WARN Act, the question that we got is, "Does the WARN Act apply to CAAs in the event that layoffs due to funding issues are necessary?" So the WARN Act, the Worker Adjustment and Retraining Notification Act, basically generally requires certain employers to provide at least 60 days of notice when they plan to do a "plant closing" or a "mass layoff." In quotes, because those are directly from the statute. It's federal law. The federal WARN Act applies to for-profit and nonprofit entities with specific

numbers of employees – generally 100 or more full-time employees, or 100 or more full-time and part-time employees who work more than 4,000 non-overtime hours per week. So there's math involved, unfortunately.

It does not, however – if there are any public CAAs on the call – it does not apply to employees of federal state or local governments who provide public services. Mini-WARNS, which I have on this slide, are state laws that have similar or more stringent requirements to the federal law. The rule of thumb is that if the federal WARN Act and a Mini-WARN Act apply, the law that is more favorable to your employees will govern.

In determining whether the WARN Act applies to your specific situation, you've got to consider a lot of things: the number of full-time and part-time employees that your CAA has, the number of hours those employees work, the location and the size of the layoffs, the form of the layoff itself – such as whether employees are only temporarily laid off. The law is also structured in a way that accounts for – we'll call them tricks or strategies – that organizations might try to implement to avoid being subject to the act. The basic idea is that under the federal law, terminating 50 or more employees at a single site will typically trigger WARN Act notification requirements.

The federal law also has some exceptions. The first one, the one that's most likely to be applicable to CAAs, is what's called the unforeseeable business circumstances exception. This applies to plant closings and mass layoffs that are caused by business circumstances that were not reasonably foreseeable at the time the 60-day notice would have been required. For the exception to apply, it has to be a sudden, dramatic, and unexpected incident that prevents an employer from complying with the WARN Act. When that kind of incident occurs, you still have to provide the WARN notice. However, you won't be penalized for it being tardy. So the burden is also on the employer to show that the exception applies to it in any particular circumstance.

If you do have particular specific questions about the applicability of the WARN Act or Mini -WARN to a layoff that your CAA is considering, you can reach out to CAPLAW, or you can also reach out to a state attorney for assistance. Employment lawyers are the kind of attorney you'd be looking for in this circumstance.

Next slide, which I think is our question slide. And so I've seen this a couple of times in the chat, but Part 1 of this webinar series, the recording and slides are already available to CAPLAW members only in our Resource Library. Most CAAs are CAPLAW members. And you can reach out to admin@caplaw.org which is here on this slide to get the 2025 username and password. The recording and slides for this webinar will be posted next week.

All right, so I think we have eight minutes or so – I can rapid fire through some questions that I've seen, if that's okay with Jon and Emily. The first one is kind of related to the WARN Act, which is, "Will CAPLAW be giving guidance at some point and helping agencies navigate layoffs and closures if funding freezes do continue to occur?" The answer is yes, we do already have some existing resources, but updating them is definitely on our radar. And as I said, if you have specific questions, you can feel free to reach out to us.

Somebody asked about how recent happenings might affect our conference. The CAPLAW conference is still on as planned, May 28-30th in our hometown of Boston. Registration will be opening very soon, so keep an eye out.

Someone asked about the preliminary injunction hearing in the D.C. court case on February 20, which I mentioned is going to be available via phone conference. Someone else in the comments, very nicely pointed out that the Court Listener website has public dockets for the two Pause Memo cases which include that information. The Court Listener web pages get updated manually, so they might not always be timely, but I'm just going to guess that Court Listener is making those cases a priority right now. And the information that the toll free number and the meeting ID are, in fact, on the Court Listener website – on the docket for the D.C. case already – so you can just call in.

Somebody asked about standing in order to file a lawsuit. So there are entire classes on standing in court practice in law school, and I don't think we have a ton of time to get into it, but I can give you some words to Google. Standing is what's called a jurisdictional requirement. In order for the Court to hear a case, you have to have it. And standing in federal court has three things that plaintiffs have to have. The first is what's called an alleged injury in fact. The second is causation. And the third one is a fun word, redressability. So hopefully that gives you a little bit to base your research on for further information.

Multiple people asked about getting access to the funding freeze memo – I'm assuming you mean the Pause Memo – as well as the list of original programs that were I believe attached to the Pause Memo, is what this question was asking. If you receive CAPLAW's news alerts, those were linked in the TROs – we linked out to them, essentially. If you go back to the TROs and you look in the links, you'll be able to see those documents that we linked to.

And then someone also asked, "How long do federal agencies have to release federal funding if it's still being held up?" If the freeze is being based on the Pause Memo or the EOs, the recent TRO enforcement order is very clear that the release has to be done immediately. That's rapid fire. I apologize.

[Jon]
Thanks, Savanna. Just looking through the list of questions to see what else we may have.

[Emily]
I can try to answer just a few. We had a question about, what if we have something in our work plan about immigration? I'd say speak with your funding source or your state pass-through entity and try to understand what they plan to do. It's possible that they might be planning certain changes to your work plan. So I'd say our suggestion would be to get in touch with whatever funding source you worked with on that work plan.

Some questions about conflicts, again, between federal and city law. Similar to my discussion on potential conflicts between state and federal law, this might result in a bit of litigation. At the moment, what could help is to make sure that you're prepared to comply with the federal law, but also you could get in touch with a state attorney as well that's familiar with that specific state law to assist you.

I saw some people asking about the disclaimer language, which I think was passed along by Matt – thank you very much – in the chat has copied some of that language in there that we were referring to.

I see some discussion about CAA reporting systems with respect to immigration from Jim – thank you very much. Yeah, essentially reiterating that you're not required to gather and keep information on immigration status with respect to your CSBG services, because there's no immigration limitations on the provision of CSBG services.

And then moving on to some quick immigration law questions about whether ICE can enter DV shelters with a warrant. DV, domestic violence, shelters would very likely be considered private spaces, so ICE can only enter if they have a judicial warrant. But ICE can enter if they have that judicial warrant. So again, we recommend training staff to request that warrant and how to read the warrant and understand what its scope is.

[Jon]
I see a question here about CAPLAW giving guidance at some point – helping agencies navigate layoffs or closures that may result from a lack of funding or funding freeze. And that is something that we do have some guidance on. So if that person would like to get in touch with us directly, we can provide that type of guidance.

[Emily]
I also see some questions about warrants in the chat. Someone asked if they could be sent an example of an admin versus a judicial warrant. In just a moment, I'll drop a link in the chat from NILC, which talks about subpoenas and warrants, and I think provides a lot more context on both what Jon and I were speaking about today. And if you scroll all the way down, I believe that that includes both a sample of an administrative and a judicial warrant for your review.

And then I see a question too about whether it is reasonable to expect ICE to wait for the appropriate member of staff to come and read a warrant. I do think staff should ask for the warrant and ask for time to read the warrant. You might be surprised how long that might take to check. So if there is an issue with ICE waiting for the proper person to actually arrive from your team, just have the other staff members try to read through it in a logical way, check things like location and name. They don't necessarily have to be intimately familiar with warrants, but just kind of give the document a reasonable, logical look. I think ICE likely is not going to wait for extended periods of time while that's happening, so make sure that there are staff on site that are ready and able to read that warrant. But one option is just having staff essentially buy some time by taking a look at the warrant, even if they're not super familiar with it, while other staff members that are more familiar can join them. There were a few other questions on warrants that I think that NILC article – I'm going to put in the chat – will be especially helpful for.

[Jon]
Great thank you. Thank you Emily and thank you everyone who joined today. I know there are a lot of questions. Hopefully we got to most, if not all. But again, if you're still having questions about any of this, please do reach out to us. We are here at the email you see there, as well as the number. Happy to answer any additional questions one-on-one with organizations.

Thank you, Emily, thank you Savanna, for your great insights on this webinar and again, thank you all for joining. Have a good rest of your day.

[Savanna]
Thanks, everyone. Bye.