L4GG Guidance Brief:

The Impact of H.R. 1 Rescissions on EPA Grant Programs

H.R. 1 rescinded the "unobligated balances" from a number of federal environmental grant programs from the United States Environmental Protection Agency (EPA), Department of Energy (DOE), and Department of Transportation (DOT), including the Greenhouse Gas Reduction Fund (GGRF) (Clean Air Act (CAA) 134), the Climate Pollution Reduction Grant Program (CAA 137), the Environmental and Climate Justice Block Grant (EJ Grants) programs (CAA 138), and many more. According to scores provided by the Congressional Budget Office, the total amount of funds that was identified to be rescinded at the time the law becomes effective was fairly small. Amounts generally represented the funds set aside for federal agencies to administer and oversee the programs, funds that were not previously obligated (i.e. not awarded), and de-obligations from grants that were terminated and closed out prior to the July 4, 2025 enactment of H.R. 1. However, we have seen public statements from this Administration after the passage of H.R. 1 suggesting that it is now authorized to rescind larger amounts that may include previously obligated funding under terminated grants that it now considers unobligated. It will be critical for grantees to continue to monitor their balances to ensure that this Administration does not attempt to rescind anything other than the unobligated funds contemplated at the time of H.R.1.

"Unobligated" vs. "Unspent"

Grant recipients should know, first and foremost, that H.R. 1 rescinded only unobligated funds, not unexpended (unspent) funds. Obligation is a term of art describing a "legally binding commitment" on the part of the federal government. For the large majority of grant recipients, funds are obligated at the moment a finalized award is issued. The amount of obligated funds on grants is indicated on the first page of a grantee's award documentation. In other words, H.R. 1 does not claw back the portion of an award that has not yet been spent

Termination and Close Out

For recipients that have received Notices of Termination, funds should remain obligated during the 120-day close-out period. This is due in part to allow any appeals or challenges of the termination to play out. Under established practice, funds should only be de-obligated

once a grant has been properly closed out as provided in 2 CFR 200.344, either unilaterally by EPA or with the agreement of the recipient after the 120-day close-out period has ended. In addition, the funds of recipients in an active administrative dispute process should also remain obligated until the dispute is resolved by EPA, constituting final agency action. Finally, if a recipient is part of a lawsuit in which an agency is enjoined from closing out awards and de-obligating funds, their funds should also remain available. In any of these cases, funds remain obligated and should not be subject to the rescissions in H.R. 1.

CAA 134 and GGRF

H.R. 1 also repealed the authority under CAA 134 for GGRF, which includes the National Clean Investment Fund (NCIF), the Clean Communities Investment Accelerator (CCIA), and Solar for All. While NCIF and CCIA are currently paused and in active litigation, Solar for All recipients should continue to implement their programs and highlight the great benefits accrued to communities. Even though CAA 134 was repealed, the grant agreements EPA made with recipients when the provision was still law are legal and valid and should be considered obligated funds. To consider those funds now unobligated and rescinded would "raise serious Constitutional concerns under the Takings Clause," as the plaintiffs in *Climate United v. EPA* argued in response to the government's assertion that Congress intended to rescind all $17 billion in CAA 134 funds. Indeed, the Republican Chair of Environment Subcommittee of the House Energy and Commerce Committee, Representative Morgan Griffith, stated during the markup of the bill's provision, "we can't rescind expenditures that have already been obligated," and "If the grant has already been granted and the money is obligated, then this—then our language does not affect that."

What happens next?

L4GG cannot predict how EPA will respond to the rescission of grant administration funds. EPA may argue that because the funds to administer these grant programs were rescinded, it can no longer support and must terminate the grants. However, as described above, EPA cannot rescind terminated grant funds. Moreover, EPA has legal flexibility to move funds from general appropriations in the Environmental Programs and Management account to administer the awards, and accordingly, it would not be correct for EPA to say that it needs to close down these Congressionally-mandated programs due to an inability to carry out the grants therein. That flexibility is provided for in CAA 134, 137, and 138 - which all contain language that appropriates grant funds "in addition to amounts otherwise available." L4GG has also partnered with Earthjustice, the Southern Environmental Law Center, and Public Rights Project to file a class action lawsuit on behalf of CAA 138 grantees, *Appalachian Voices et al. v. EPA* to reinstate the Section 138 Program in its entirety as EPA has unilaterally terminated over 350 legally-obligated grant awards within the program without cause. If relief is granted in that class action, in addition to reinstating the grants, the EPA will be

required to make available sufficient funds and personnel available to successfully administer CAA 138 programs.

What Should I Do?

If you have a grant, remain vigilant and continue to check your balance in your federal account. If your grant has been terminated or you have questions about your grant, you can get direct pro bono assistance from L4GG and EPN here. To stay informed of additional updates post guidance, you can subscribe here.

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