

General FAQs on Executive Actions Impacting Nonprofits



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There are so many executive actions being taken by President Trump. Which ones do I have to worry about?

See [NCN's Executive Orders Affecting Nonprofits Chart](#) for the most updated information on which executive orders directly and indirectly affect charitable nonprofits. Some of the provisions are more specifically targeted at nonprofit organizations' activities, and others will have more indirect impacts. There are also individual memos and guidance that are being issued by agencies - and a lot more are to come - that will have an impact on nonprofits. And, there are lots of rules and actions from prior Administrations being rescinded, so it's important to stay up to date on changes of directives that you had previously been required to follow.

The Chart is regularly updated with this information.

Do I have to worry about these actions if my organization doesn't receive federal funding?

Yes. While some of these directives are specifically tied to what is being done with federal funds, including federal funds that pass through other entities like states, the federal government can also enforce some of the new directives for all entities that are required to follow federal laws, even if they do not have direct funding. And, as charitable nonprofit organizations, they can impact your 501(c)(3) status.

What if my organization receives federal funds but doesn't use those funds for prohibited activities?

Many of the executive actions being implemented are threatening to take federal funds away for activities being conducted by organizations on the whole, regardless of the specific activity paid for by federal funding. So, it may not matter if you use federal funds for prohibited activities or if the funding is from a different source. Furthermore, since concepts like "diversity, equity, and inclusion" are not defined yet by the Administration, and there will remain legal challenges as the Administration declares different activities illegal, it is not clear what activities will be specifically unlawful.

There will also likely be new conditions and limitations placed on the federal funds that you receive through federal assistance (any federal funding or benefits that go to your organization for your use directly or that you pass along to your community members), grants, or contract payments so attention should be paid to those rules and conditions as they are released.

Can the federal government cancel my contract or grant because they say it doesn't align with the executive orders?

The federal government, in law, has broad discretion to cancel federal grants and contracts. However, the answer to this question is that it will be specific to your particular grant or contract. Every agency has its own rules and procedures, different contracts and grants have their own terms and conditions, and different statutory and regulatory requirements for different federal programs apply. It also may depend on how this funding is terminated, how Congress funded them, and the results of some applicable court cases. Regardless, you should not assume that they cannot terminate your federal contract or grant either in the same fiscal year or for future years, and should make contingency budget plans accordingly.

Is my 501(c)(3) status at risk?

A 501(c)(3) may not engage in behavior that is illegal or violates public policy, and doing so can put their 501(c)(3) tax status at risk. (See generally, [IRS Revenue Ruling 71-447](#) and the case law following the U.S. Supreme Court decision in [Bob Jones Univ. v. United States](#).) Because the administration has not yet defined what it will consider to be unlawful diversity, equity, and inclusion (DEI) activities (see next question), it is not clear if or how the Internal Revenue Service (IRS) might use specific activities to determine whether a nonprofit organization engaged in illegal activity. Furthermore, while the public policy doctrine has rarely been used to revoke an organization's 501(c)(3) status, when it has been used, it has been in cases involving racial discrimination in education. However, the administration's actions related to DEI activities are being challenged in court through multiple lawsuits, so it will take time to have legal clarity on what DEI activities will or will not be permissible by law.

How is diversity, equity, and inclusion (DEI) being defined by the administration?

The administration has not defined "Diversity, equity, and inclusion (DEI)". The executive actions do make clear that the administration's definition will go beyond what things are called or what words are used. Nonprofit organizations should start risk reviews, but also stay tuned both for legal guidance that will be released by the individual agencies as they take actions pursuant to the President's directives, and how the multiple lawsuits challenging the administration's actions on DEI play out in court. Check back often for updates to [NCN's Executive Orders Affecting Nonprofits Chart](#).

Should my organization be adjusting our work on diversity, equity, and inclusion (DEI)?

It is not clear yet how the Administration will be defining DEI, what activities they will determine are in violation of the executive orders or are contrary to the President's priorities, or how the courts will rule on these questions. Nonprofit organizations should take a holistic review of their activities and continue to do so as legal guidance is issued by individual federal agencies to define the prohibited activities and rulings in various court cases are handed down. Every nonprofit will need to make a determination of the level of risk they are willing to take and evaluate each activity to determine whether it is critical to its work. Finally, whatever changes your organization decides to make, be sure to have robust stakeholder engagement and a communications strategy so that your different constituencies understand the impact of those changes.

How will the diversity, equity, and inclusion (DEI) executive orders specifically impact my organization?

There are two executive orders targeted specifically at ending DEI [Ending Radical and Wasteful Government DEI Programs and Preferencing](#) and [Ending Illegal Discrimination and Restoring Merit-Based Opportunity](#).

There are several ways these can impact nonprofit organizations, although there is also a lot we don't know yet and we are waiting for specific agency action and court rulings to learn more.

If you have a contract or grant to provide or advance "DEI, DEIA, environmental justice" programs, services, or activities, your contract or grant may get terminated and/or not continued. If you are a nonprofit who has a contract with the federal government to do any DEI training or work, those contracts will also likely be terminated. [[Ending Radical and Wasteful Government DEI Programs and Preferencing](#)]

If you are a federal contractor, the requirements you have to meet may change. There will be prohibitions on federal contracts "promoting diversity," on holding federal contractors and subcontractors responsible for using affirmative action, and on allowing or encouraging federal contractors and subcontractors from

engaging in “workforce balancing” based on race, color, sex, sexual preference, religion, or national origin. The terms in future contracts and grants will also change and impact what you can do at your organizations. Every contract and grant award will include a term requiring you to agree that you are compliant in all respects with all applicable Federal antidiscrimination laws and that you do not operate any programs that promote DEI and violate any federal anti-discrimination laws. Any procedures for federal assistance, contracts and grants will be stripped of references to DEI and DEIA principles, regardless of what they are called. You also may see federal assistance or other programs end because they have a focus on diversity or equity. [[Ending Illegal Discrimination and Restoring Merit-Based Opportunity](#)]

Will my organization be a subject of investigation?

The president has directed every agency and executive department to review all funding that agencies provide to nongovernmental organizations, including nonprofit organizations, and align future funding decisions with “the interest of the U.S. and with the goals and priorities of [the] Administration” as expressed in executive actions, as determined in the judgment of the agency heads, and on the basis of statutes and regulations. In addition, every federal agency was asked to identify up to nine entities – including large nonprofits or associations, foundations with more than \$500 million of assets, and higher education institutions with endowments of \$1 billion or more – for potential civil compliance investigations.

Bottom line

It is important for each organization to conduct a risk assessment, and potentially engage legal counsel to be advised on steps that may need to be taken to ensure compliance with updated guidance. Depending on the amount of governmental funding the organization has, budgetary contingency planning should be done.

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