

# 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 And, there are lots of rules and actions from prior Administrations being rescinded, so it's important to stay up to date on changes of directives that you had previously been required to follow.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.

## **Federal Grants and Contracts**

### **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. For example, there is currently a national preliminary injunction blocking the Administration from using the two diversity-related executive orders as a reason to “pause, freeze, impede, block, cancel, or terminate” any grants or contracts, which currently prevents the Trump Administration from doing so following the date the order was issued on February 21st. That decision is being appealed by the Trump Administration.

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.

### **How is the mass termination of federal employees impacting nonprofits?**

As the Administration takes steps to reduce the federal government, there are fewer staff at agencies, causing delays in responses to nonprofit organizations. Whether this is about current federal grants and contracts, or other resources from the federal government, there will likely be other downstream impacts.

### **Can the federal government require me to certify that my organization does not promote DEI activities in order to continue receiving federal funding?**

President Trump’s [Executive Order 14173](#) stated that the head of every agency shall include in every contract and grant award “a term requiring the recipient to certify that it does not operate any programs promoting DEI.” On February 21st, a court issued a national [preliminary injunction](#) prohibiting federal agencies from requiring such a certification because the provision would prohibit activities that are broader than what is being funded by the federal government and because DEI has not been defined.

## **Funding Freeze Lawsuit**

### **What are the next steps on the Administration’s proposed funding freeze?**

On January 27, the White House Office of Management and Budget [issued a memo](#) stating that they would pause disbursements from all open agency grants and loans. The National Council of Nonprofits, American Public Health Association, Main Street Alliance, and SAGE filed to stop the memo from going into effect ([see the Complaint](#)). On January 29, OMB [rescinded the memo](#), but the Trump Administration made clear that they still intended to cut off funding. As a result, the lawsuit is continuing to keep the funding freeze from proceeding. The U.S. District Court for the District of Columbia granted a [preliminary injunction](#) on the freeze, meaning it has said that the Administration cannot implement a funding freeze on disbursement of federal funds for all open awards during the litigation.

### **What is a preliminary injunction and why does it matter?**

A preliminary injunction is issued by a judge when there is found to be irreparable harm that cannot wait to be addressed after long court proceedings and may remain in place while the lawsuit is pending. It is issued when there is immediate harm and is awarded when there is likelihood of success on the merits. It matters because the remedy – in the recent cases against the Trump Administration, meaning blocking an action that has been taken like the funding freeze – is imposed immediately instead of waiting months, or even years, for the legal proceedings to conclude.

## **Do the recent court decisions blocking the federal funding freeze prevent individual grants or contracts from being terminated?**

Not necessarily. The court decisions on the federal government funding freeze prohibit the Administration from stopping federal funding for open grants and contracts and only when done across the board. NCN has requested clarification from the court on what is deemed an “open” grant or contract. Courts have recognized that the Administration has the authority to review individual grants and contracts and terminate them, if that termination is consistent with statute and regulations. However, there is currently a national preliminary injunction blocking the Administration from using the two diversity-related executive orders as a reason to “pause, freeze, impede, block, cancel, or terminate” any grants or contracts.” That decision is being appealed by the Trump Administration.

## **Should we still apply for open federal awards?**

Yes. Congress is still appropriating funds for programs and the agencies are required to obligate those funds. Nonprofit organizations should continue to monitor the Federal Register for federal funding opportunities and consider applying. They should weigh the benefits and risks for their own organizations about whether they want to, or are able to, meet the conditions that will likely be tied to federal funding through Administration actions.

## **Nonprofit Advocacy**

### **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.

### **Should nonprofit organizations be engaging in advocacy with their Members of Congress?**

Nonprofits can and should advocate, including lobbying, and share with Members of Congress the impact of the executive orders and how any grant or contract terminations by federal agencies affect its work and the communities they serve.

## **Diversity, Equity, and Inclusion**

### **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](#).

## **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 may also 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 may 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 may also change and impact what you can do at your organizations. Every contract and grant award could 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 may 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](#)]

In the first [court decision](#) on these executive orders, a judge issued a national injunction on the portions of the executive orders that require agencies to cancel federal contracts or grants with DEI components and that require government contractors and grantees to certify that they do not engage in DEI practices. This is just the first step in the legal challenge and it is unclear how it will be applied by the Administration.

## **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.

## Other

### What does the Executive Order on [Public Service Loan Forgiveness \(PSLF\)](#) mean for nonprofits?

On March 7, President Trump issued an [Executive Order](#) directing the Secretary of Education to revise the current agency rules on the Public Service Loan Forgiveness Program to exclude organizations that “engage in activities that have a substantial illegal purpose,” including organizations that advance illegal immigration or support “terrorism”, “child abuse”, “illegal discrimination”, or “disorderly conduct”. It does not make any immediate changes to the program. Any proposed revisions would need to be made by updating current regulations and would be required by statute to go through a process called negotiated rulemaking, which is a process that includes the agencies as well as representatives from impacted parties. Executive orders cannot override federal law and the Public Service Loan Forgiveness statute states that 501(c)(3) organizations are covered as eligible employers for PSLF.

## 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.

National Council of Nonprofits will continue to provide updated FAQs, as well as fact sheets or toolkits with guidance and best practices, on key issues impacting nonprofit organizations. Tell us [how your organization is being impacted](#), check back often for updates to our [NCN’s Executive Orders Affecting Nonprofits Chart](#), and sign up for [NCN’s email list](#).

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