

**ACC National Capital Region  
Nonprofit Conference  
July 24, 2025**

**Executive Orders, Agency Actions and Tax Legislation.... OH MY!!**

**Diara M. Holmes and Meghan Biss, Partners  
Nonprofits & Tax-Exempt Organizations Practice  
*Loeb & Loeb LLP***

**Catherine E. Livingston  
Chief Legal Officer  
American Institute of Research**



# Roadmap

- Presidential Actions: Executive Orders and Memoranda
- Federal Agency Guidance
- Proposed Regulations Re: Public Service Loan Forgiveness
- Tax Legislation: One Big Beautiful Bill Act
- Don't Panic; Prepare!
- Questions?

# **Presidential Actions: Executive Orders and Memoranda**

# Executive Orders

Since January 20, President Trump has issued numerous Executive Orders that impact nonprofit organizations--in some cases naming specific organizations, and in other cases targeting segments of the sector based on their programs and activities.

For example, by:

- reducing or canceling sources of funding.
- terminating government programs on which nonprofits or their beneficiaries depend.
- declaring certain activities to be “illegal.”
- directing investigations.
- reducing the workforce (i.e., layoffs) of agencies on which nonprofits depend.

Several of the Executive Orders have been challenged as unconstitutional in federal district courts.

# White House Memorandum for the Heads of Executive Departments and Agencies (Feb. 6)

- Subject: Advancing United States Interests When Funding Nongovernmental Organizations
- “It is the policy of my Administration to stop funding NGOs that undermine the national interest.”
- Directs the heads of executive departments and agencies to “review all funding that agencies provide to NGOs.”
- Requires agencies to “align future funding decisions with the interests of the United States and with the goals and priorities of my Administration, as expressed in executive actions; as otherwise determined in the judgment of the heads of agencies; and on the basis of applicable authorizing statutes, regulations, and terms.”

# Sec. 4 of the Jan. 21 Executive Order on Ending Illegal Discrimination and Restoring Merit-Based Opportunity: “Encouraging the Private Sector to End Illegal DEI Discrimination and Preferences”

Requires the AG to consult with agency heads and submit a report w/ recommendations within 120 days.

Her proposed strategic enforcement plan will identify:

(i) Key sectors of concern within each agency’s jurisdiction; (ii) The most egregious and discriminatory DEI practitioners in each sector of concern; (iii) A plan of specific steps or measures to deter DEI programs or principles (whether specifically denominated “DEI” or otherwise) that constitute illegal discrimination or preferences. As a part of this plan, each agency shall identify up to nine potential civil compliance investigations of publicly traded corporations, **large non-profit corporations or associations, foundations with assets of 500 million dollars or more, State and local bar and medical associations, and institutions of higher education with endowments over 1 billion dollars;** (iv) Other strategies to encourage the private sector to end illegal DEI discrimination and preferences and comply with all Federal civil-rights laws; (v) Litigation that would be potentially appropriate for Federal lawsuits, intervention, or statements of interest; and (vi) Potential regulatory action and sub-regulatory guidance.

# Feb 5 Memorandum from AG Bondi: Ending Illegal DEI and DEIA Discrimination and Preferences

- Issued pursuant to the Jan. 21 Executive Order
- “To fulfill the Nation's promise of equality for all Americans, the Department of Justice's Civil Rights Division will investigate, eliminate, and penalize illegal DEI and DEIA preferences, mandates, policies, programs, and activities in the private sector and in educational institutions that receive federal funds”
- “Educational agencies, colleges, and universities that receive federal funds may not ‘treat some students worse than others in part because of race.’ Students for Fair Admissions, 600 U.S. at 304 (Gorsuch, J., concurring). Consistent with the January 21, 2025, Executive Order, the Department of Justice will work with the Department of Education to issue directions, and the Civil Rights Division will pursue actions, regarding the measures and practices required to comply with Students for Fair Admissions.”

# Executive Order 14173, issued on January 21: Ending Illegal Discrimination and Restoring Merit-Based Opportunity

- Directs executive agencies:
  - “to terminate all discriminatory and illegal preferences, mandates, policies, programs, activities, guidance, regulations, enforcement actions, consent orders, and requirements.”
  - “to enforce our longstanding civil-rights laws and to combat illegal **private-sector DEI preferences**, mandates, policies, programs, and activities.”
- Rescinds prior executive orders going back to 1965 re: equal opportunity and affirmative action in federal contracting.
- Provides that recipients of government contracts or grants cannot operate any program promoting DEI that violates applicable anti-discrimination laws.



# Executive Orders and Memoranda: Climate Focus

- Several EOs and Memoranda have been issued related to climate issues (e.g., *Putting America First In International Environmental Agreements* on Jan. 20, 2025; *Protecting American Energy From State Overreach* on April 8, 2025, and *Rescission of Useless Water Pressure Standards* on May 9, 2025).
- Environmental advocates nervously anticipated an Executive Order on Earth Day that would directly address climate change and were preparing for threats to exempt status. So far, none has materialized, and according to press reports, the White House says “[n]o such orders are being drafted or considered at this time.”
- What did happen on Earth Day? From the Washington Post:

Climate

## EPA to fire or reassign more than 450 staffers working on environmental justice, DEI

The move is part of the Trump administration’s push to close the EPA’s Office of Environmental Justice and External Civil Rights.

Yesterday at 11:38 a.m. EDT

# Executive Orders and Memoranda: LGBTQIA+ Focus

- Executive Order re: Transgender Athletes
- Executive Order re: Museum of Women in the Arts
- Scrutiny of gender affirming care providers
  - AG Memorandum (April 22, 2025)
- Dept of Education's proposed language re: PSLF would deny eligibility for loan forgiveness to those working for organizations that "provide healthcare" for transgender youth <19 years old.

# Executive Orders and Memoranda: Miscellaneous

- Religious Organizations
  - Executive Order re: Establishment of the Religious Liberty Commission
  - Executive Order re: Eradicating Anti-Christian Bias
  - Agency Actions: Investigations into Title VI violations by universities for antisemitic behavior
  - DOJ/IRS consent decree in National Religious Broadcasters: IRS enforcement of the Johnson Amendment
- Business Leagues
  - Numerous executive orders and memoranda related to commerce, manufacturing, tariffs, etc.

# **Federal Agency Guidance**

# Department of Justice: “Blanche Memo”

- Issued by Deputy Attorney General Todd Blanche on May 19, 2025, titled “*Civil Rights Fraud Initiative.*”
- DOJ initiative to use the False Claims Act to enforce civil rights compliance.
  - Targets federal fund recipients, including nonprofits, universities, and contractors.
  - Targets use of racial preferences, “illegal DEI”, anti-semitism, transgender policies.
  - Creates Civil Rights Fraud Initiative.
  - Encourages qui tam lawsuits by private individuals.
- Key Elements:
  - Knowing violation of civil rights laws and
  - False certification of compliance and materiality

# Dept. of Education (Office of Civil Rights): “Dear Colleague” Letter issued on Feb. 14, 2025

- Sets forth “nondiscrimination obligations of schools and other entities that receive federal financial assistance” from the U.S. Department of Education.
  - *“Federal law thus prohibits covered entities from using race in decisions pertaining to admissions, hiring, promotion, compensation, financial aid, scholarships, prizes, administrative support, discipline, housing, graduation ceremonies, and all other aspects of student, academic, and campus life.”*
  - “relying on non-racial information as a proxy for race, and making decisions based on that information, violates the law” and “federal law thus prohibits covered entities from using race in decisions pertaining to admissions, hiring, promotion, compensation, financial aid, scholarships, prizes, administrative support, discipline, housing, graduation ceremonies, and all other aspects of student, academic and campus life.”
  - *“The law is clear: treating students differently on the basis of race to achieve nebulous goals such as diversity, racial balancing, social justice, or equity is illegal under controlling Supreme Court precedent.”*

## **Dept. of Education “Dear Colleague” Letter FAQs (Feb. 28)**

Anticipating questions, the Department issued additional guidance on February 28, 2025: Frequently Asked Questions About Racial Preferences and Stereotypes Under Title VI of the Civil Rights Act.

Stated purpose: to provide helpful information about how the SFFA decision applies to racial classifications, racial preferences, and racial stereotypes as well as how OCR interprets the ruling in its enforcement of Title VI of the Civil Rights Act of 1964 and its implementing regulations.

# Dept. of Education “Dear Colleague” Letter **UPDATE**

From the Department’s website:

- On April 24, 2025, a federal court enjoined the Department from "enforcing and/or implementing" the following: Dear Colleague Letter: Title VI of the Civil Rights Act in Light of Students for Fair Admissions v. Harvard (Feb. 14, 2025), Frequently Asked Questions About Racial Preferences and Stereotypes Under Title VI of the Civil Rights Act (first issued on Feb. 28, 2025), End DEI Portal, and Reminder of Legal Obligations Undertaken in Exchange for Receiving Federal Financial Assistance and Request for Certification Under Title VI and SFFA v. Harvard (April 3, 2025) (certification requirement) against the plaintiff National Education Association, et al., its members, and any entity that employs, contracts with, or works with its members. See, Nat'l Educ. Ass'n v. United States Dep't of Educ., No. 25-CV-091-LM (D.N.H. Apr. 24, 2025).
- As a result, the Department of Education’s Office for Civil Rights **will not take any enforcement action, or otherwise implement, the February 28, 2025, Dear Colleague Letter, associated FAQs, the End DEI Portal, or the certification requirement until further notice.**



# Congressional Hearings and Investigations

- International Center for Not-for-Profit Law is tracking Congressional investigations and referrals affecting U.S. nonprofits: [Congressional Investigations – ICNL](#).
  - Example: House Oversight Committee, DOGE Subcommittee Hearing: **“Public Funds, Private Agendas: NGOs Gone Wild”** (June 4, 2025).
- From the House Oversight Committee’s Press Release:

“At the hearing, members and witnesses exposed the ties that bind left-wing nongovernmental organizations (NGOs), Democrat elected officials and appointees, and bureaucrats who write grants and contracts. Radical Democrats have funneled billions of taxpayer dollars to NGOs to advance destructive policies, such as open borders and the Green New Deal scam—all while lining the pockets of their friends and allies. Members and witnesses agreed that NGOs’ taxpayer-funded slush funds must be shut down to prevent the waste and abuse of taxpayer resources.”

## **Attorneys General Actions:**

### **Coalition of 10 AGs (TX, AL, NE, ID, SC, IN, UT, IA, VA, MN) Issued a Letter to Financial Institutions**

- Addressed to six financial institutions including Blackrock, JP Morgan, and Goldman Sachs.
- Indicates concern that these companies’ “political objectives have... influenced [their] decision-making at the expense of [their] statutory and contractual obligations” to stakeholders. Specifically race and sex-based quotas on business and investment decisions being prioritized over maximizing shareholder and asset value.
- Claims this is a violation of fiduciary duty, Title VII, and potentially Section 1981 if they offer diversity programs.
- Requests that each of the listed financial institutions answer a series of questions detailing diversity initiatives in employment and investment.

## **Attorneys General Actions:**

### **Coalition of AGs Issued Guidance on DEI (Feb 13)**

**(MA, IL, AZ, CA, CT, DE, HI, ME, MD, MN, NV, NJ, NY, OR, RI and VT)**

- Affirmed that DEI programs are lawful and beneficial for workplaces, while urging employers to comply with anti-discrimination laws.
- “Initiatives promoting diversity, equity, inclusion, accessibility, various skill sets, and different perspectives and experiences in the workplace are not the same as affirmative action and do not involve providing preferences to individuals based on protected characteristics in discrete hiring, promotion, or job retention decisions.”
- “Effective diversity, equity, inclusion, and accessibility practices are lawful, help ensure legal compliance and promote organizational success.”

# Federal Funding Cuts and Grant Freezes

- USAID
- Department of Education
- NEA grant denials/rescissions (May 2025)
- Smithsonian
- NPR
- PBS

# Public Service Loan Forgiveness

## Executive Order: “Restoring Public Service Loan Forgiveness” (March 7, 2025)

Directs the Secretary of Education and Secretary of the Treasury to propose revisions to the regulations governing the PSLF program to “ensure the definition of ‘public service’ excludes organizations that engage in activities that have a **‘substantial illegal purpose’** including:

- (a) aiding or abetting violations of 8 U.S.C. 1325 or other Federal immigration laws;
- (b) supporting terrorism, including by facilitating funding to, or the operations of, cartels designated as Foreign Terrorist Organizations consistent with 8 U.S.C. 1189, or by engaging in violence for the purpose of obstructing or influencing Federal Government policy;
- (c) child abuse, including the chemical and surgical castration or mutilation of children or the trafficking of children to so-called transgender sanctuary States for purposes of emancipation from their lawful parents, in violation of applicable law;
- (d) engaging in a pattern of aiding and abetting illegal discrimination; or
- (e) engaging in a pattern of violating State tort laws, including laws against trespassing, disorderly conduct, public nuisance, vandalism, and obstruction of highways.”

# Public Service Loan Forgiveness: Additional Actions

- April 4: Dept of Ed announced its intent establish a Negotiated Rulemaking process: <https://www.federalregister.gov/documents/2025/04/04/2025-05825/intent-to-receive-public-feedback-for-the-development-of-proposed-regulations-and-establish>
- April 29 and May 1: Public hearings. Comments were due on May 5. Among them was a letter signed by 186 organizations representing “millions of students, borrowers, workers, people of color, veterans, women, people with disabilities, and consumers crushed under the weight of student loan debt.” The coalition, led by Student Borrower Protection Center and Democracy Forward, expressed strong opposition to the Executive Order.

***“Efforts to limit access to or weaponize PSLF will threaten critical public service fields and harm our most vulnerable communities.”*** [https://protectborrowers.org/wp-content/uploads/2025/05/SIGN-ON\\_-Coalition-Neg-Reg-Response-IDR\\_PSLF-2.pdf](https://protectborrowers.org/wp-content/uploads/2025/05/SIGN-ON_-Coalition-Neg-Reg-Response-IDR_PSLF-2.pdf)

- June 24: the Dept of Ed released proposed regulatory language to implement the Executive Order. The proposed language would render an employer ineligible—thereby disqualifying its employees—if it engages in activities that have a “substantial illegal purpose.” The Secretary of Education would be able to make the determination. I think the regulatory language (draft) was included in a discussion paper distributed during the negotiation sessions: <https://www.ed.gov/media/document/neg-reg-2025-draft-paragraph-h-pslf-reg-text-063025-110322.pdf>
- <https://www.ed.gov/media/document/2025-neg-reg-pslf-discussion-paper-final-day-2-july-1-110331.pdf>

# Public Service Loan Forgiveness: Additional Actions

- June 24: the Department released proposed regulatory language to implement the Executive Order. <https://www.ed.gov/media/document/neg-reg-2025-draft-paragraph-h-pslf-reg-text-063025-110322.pdf>
- June 30-July 2: Negotiated Rulemaking Session: <https://www.ed.gov/about/news/press-release/us-department-of-education-concludes-negotiated-rulemaking-session-restore-public-service-loan-forgiveness>
- Companion bills have already been introduced in the Senate and House that would amend the public service loan forgiveness program under the Higher Education Act of 1965 “to ensure qualifying public service excludes employment with organizations that engage in activities that have a substantial illegal purpose.”
  - S.1845 and H.R. 3739 – both called the No Loan Forgiveness for Terrorists Act of 2025.

# PSLF and Questions re 501(c)(3) Status: Illegality Doctrine

The “**illegality doctrine**” prohibits charitable organizations from engaging in illegal activities or actions that violate public policy.

- An organization with an **illegal purpose** cannot qualify for tax exemption.
  - See *Church of Scientology of California v. Commissioner*, 83 T.C. No. 25 (September 24, 1984) (*upholding the IRS’ revocation of tax-exempt status*).
- Even an organization with a legal purpose will not qualify for tax exemption if it engages in **substantial illegal activity**.
  - See *Mysteryboy, Inc. v. Commissioner*, T.C. Memo 2010-13 (holding that the organization’s proposed activities are prohibited by law, violate public policy as reflected in those laws, and tend to promote illegal activities).



# “Against Public Policy”: What does that mean today?

- 

The **illegality doctrine** prohibits **both (i) illegal activities**, and **(ii) those that -- while not necessarily illegal -- are contrary to a fundamental public policy.**

- In *Bob Jones University v. United States*, 461 U.S. 574 (1983). the U.S. Supreme Court upheld the IRS’ revocation of a private religious university’s 501(c)(3) status, ultimately on the ground that it refused to terminate a policy against interracial dating by students.
- In determining that there was a strong public policy against racial discrimination, the Court in *Bob Jones* considered the unanimous decisions from all three branches of the federal government.
  - The Court said, "*it would be anomalous for the Executive, Legislative and Judicial Branches to reach conclusions that add up to a firm public policy ... and at the same time have the IRS blissfully ignore what all three branches of the Federal Government had declared.*"

# American Alliance for Equal Rights: Files IRS Referrals

- April 1, 2025: AAER formally requested that the IRS open examinations of three private foundations: Gates Foundation, Lagrant Foundation, Creative Capital Foundation. In each case, AAER submitted IRS Form 1309 and a letter setting forth points and authorities alleging that the foundations operate programs (e.g., scholarships, mentoring, leadership and career development) that “categorically exclude white Americans from benefits and opportunities based solely on race.”
- In the letters, which read like legal briefs (arguments, exhibits, etc.), AAER cites *Bob Jones University v. United States*, the IRS's Exempt Organizations Technical Guide, and Executive Order 14173 and other Trump executive orders.
- **Update** (4/13/25): Stating the goal of ensuring that the Gates Scholarship program meets the broadest range of low-income students, “it has been decided to expand eligibility to all Pell grant-eligible students...”

# American Alliance v. ABA

- AAER filed a federal a complaint against the ABA in the Northern District of Illinois, alleging that ABA's Legal Opportunity Scholarship program is racially discriminatory because it unlawfully excludes white students, and it's contractual in nature, and therefore violates 42 U.S.C. §1981.
- The Legal Opportunity Scholarship Fund awards \$15,000 of financial assistance to up to 20 incoming diverse law students. From AAER's press release: "As noted in the complaint, the ABA requires scholarship applicants to sign agreements and submit extensive documentation—personal statements, tax records, release forms—in exchange for a chance at financial support."
- AAER further alleges that the scholarship is "part of a broader pattern of polarizing race-conscious policies and programs..."
- AAER seeks declaratory and injunctive relief, including a court order barring the ABA from considering race in the selection of scholarship recipients. It also requests nominal damages and an order reopening the application process using race-neutral criteria.
- See *also* Executive Order on "Reforming Accreditation to Strengthen Higher Education" (April 23, 2025): Specifically calls out the ABA's Council of the Section of Legal Education and Admissions to the Bar because it is "the sole federally recognized accreditor for Juris Doctor programs" and it requires "law schools to 'demonstrate by concrete action a commitment to diversity and inclusion' including by 'commit[ting] to having a student body [and faculty] that is diverse with respect to gender, race, and ethnicity.'"

# **Tax Legislation: One Big Beautiful Bill Act**

# The One Big Beautiful Bill Act

- Charitable Giving Provisions
- Excise Tax on Excess Compensation
- Tax on Private Foundation Investment Income
- Higher Tax Rates on University Endowments
- Research Income Exclusion Limited

## **Gone but not Forgotten:**

- Removed proposal to tax Name and Logo Royalties as UBTI
- Removed proposal to terminate exemption for “Terrorist Supporting Organizations”

# Charitable Contributions

- Above the line deduction of \$150
- Tax Credit for contributions to scholarship granting organizations (private school voucher programs)
- One-percent floor for charitable contributions made by corporations

# Tax on Excess Compensation

- Definition of “covered employee” includes any current and former employees of a nonprofit receiving over \$1 million in compensation, rather than just the top five earners
- Requires such employees to pay a 21% excise tax on the amount of compensation above the \$1 million threshold

# **Tax Rate on Investment Income of Private Foundations**

- Final bill deleted provisions that would have increased excise tax on the net investment income of certain private foundations under Code section 4940



# Changes to the Tax Rates on Investment Income of Colleges & Universities

- Increases excise taxes under Code section 4968 on net investment income of private colleges and universities that have at least 3,000 tuition-paying students (up from 500 students) and at least \$500,000 in its student-adjusted endowment
- Current flat tax rate of 1.4% would be replaced with tiered rate structure dependent on the school's "student adjusted endowment." The rates are:
  - 1.4% for endowments of at least \$500,000 but less than \$750,000
  - 4% for endowments of at least \$750,000 but less than \$2 million
  - 8% for endowments of at least \$2 million
- Modifies current regulations under Code section 4968 (student loan interest and royalty income).

**Don't Panic. PREPARE!**

# Don't Panic. PREPARE!

- Review D&O and other insurance policies. Is coverage (amount and scope) sufficient for current level of risk?
- For DEI-related programs, assess exposure to Section 1981 contract claims. Mitigation strategies: project grants vs. general operating support / gifts.
- Asset protection: some organizations are considering structures involving separate legal entities, DAFs and intermediaries, foreign affiliates, prepaying multi-year grants.

# Don't Panic. PREPARE!

- Consider an independent compliance check / mock audit.  
Correct any issues before an IRS agent or State AG shows up.
- Review policies—e.g., document retention  
Is routine destruction happening according to the policy?  
Does the policy cover all forms of internal, electronic communication?  
Are employees aware that Signal and other “chat” platforms are covered by IDRs and interrogatories?
- Identify/retain counsel with expertise, as needed.
- Identify/retain crisis communications advisors.
- Set aside emergency reserves for funding responses.