



LEGAL UPDATES

Executive Order on the Public Service Loan Forgiveness Program Has Implications for All Nonprofits

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Nonprofits concerned about a politically motivated audit or other enforcement action under the current presidential administration should pay close attention to President Trump's [Executive Order regarding the Public Service Loan Forgiveness Program](#) (PSLF) issued on March 7.

While the scope of the order is limited to the administration of the PSLF – which itself is very important to many 501(c)(3) nonprofit employers and their employees – the text of the order also gives insight into what activities the Trump administration may consider and focus on as “illegal.” This is relevant well beyond the PSLF as having a “substantial illegal purpose” is also grounds for the IRS to revoke a nonprofit organization’s tax-exempt status.

What is the Public Service Loan Forgiveness Program?

The [PSLF](#) is a longstanding program administered by the Department of Education that provides an opportunity for individuals to have the balance of certain federal student loans forgiven if they work full-time for 10 years for a public service organization. Qualifying employment includes working for a federal, state, tribal or local unit of government, or most 501(c)(3) tax-exempt organizations.

What Does the President’s Order Do?

Narrowly, the order directs the Secretary of Education to issue new proposed regulations to “ensure the definition of ‘public service’ excludes organizations that engage in activities that have a ‘substantial illegal purpose.’”

The following activities are identified in the order as having a “substantial illegal purpose”:

1. Aiding or abetting violation of 8 U.S.C. 1325 [relating to improper entry] or other federal immigration laws;
2. Supporting terrorism, including by [i] facilitating funding to cartels and any other organization designated as a Foreign Terrorist Organization consistent

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with 8 U.S.C. 1189, or [ii] by engaging in violence for the purpose of obstructing or influencing federal government policy;

3. 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;
4. Engaging in a pattern of aiding and abetting illegal discrimination; or
5. Engaging in a pattern of violating state tort laws, including laws against trespassing, disorderly conduct, public nuisance, vandalism and obstruction of highways.

While vague, the breadth and scope of this list is consistent with other pronouncements from the current administration regarding its approach to certain topics that are a priority for this administration. In particular, the list of activities specifically framed as “illegal” in the Executive Order, when read in the context of other Executive Orders and recent federal guidance, potentially implicates various supports for immigrant populations; protests against the federal government and acts of civil disobedience; diversity, equity and inclusion in both employment and programming; and support for young people seeking gender-affirming health care. [We are providing updates and interpretations of the administration’s actions on these topics on [our website](#)].

How Does this Affect Nonprofits More Broadly?

Having the Department of Education designate any 501(c)(3) nonprofit as having a “substantial illegal purpose” and excluding it from the PSLF would be a major blow to the nonprofit and its employees. But that is not the only potential consequence. It is a long-settled legal principal that engaging in illegal conduct and conduct contrary to public policy is not a “charitable” or “social welfare” activity, and therefore disqualifies an organization from 501(c)(3), 501(c)(4) or other tax-exempt status, particularly if the activity is a substantial part of the organization’s purposes or activities. The use of the “substantial illegal purpose” phrase in the Executive Order aligns with language in the IRS rulings and case law on this topic, and is likely indicative of the administration’s position on these issues as they relate to qualification for tax-exempt status.

What Should Nonprofits Do?

Organizations that are concerned they could lose their ability to participate in the PSLF or may be subject to audit or other enforcement activity should consider preparing by:

- **Conducting a review of their activities that could be implicated by this Executive Order**, to ensure they have an accurate picture of their risk profile. Any solutions or risk-mitigation strategies should be tied to an organization’s actual risks. Some organizations conducting this assessment may decide to modify activities or communications strategically to reduce their risk profile, and others may decide to continue their work, but with an understanding of the risks it presents. Others may consider taking structural or operational steps to separate high-risk activities from other business.
- **Conducting a review and update of document retention and destruction policies and procedures** is warranted as well. This helps ensure important documents are retained – and can be easily located if necessary – and that extraneous materials are only destroyed pursuant to an approved and content-neutral policy.

Any activities undertaken to review and address potential legal risks, including any anticipated litigation, are best conducted under the direction of legal counsel so that the work and dialogue are protected by the attorney-client privilege to the extent possible, and with the benefit of legal advice. From a governance standpoint, a nonprofit’s board of directors should be involved in decisions on these topics, as they are likely material to the ongoing operations and work of the organization.



If you have questions about the impact of this recent Executive Order on your nonprofit organization, please contact [Sarah Duniway](#) or [Greg Larson](#), or your regular Lathrop GPM attorney.