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NONPROFITS: INTERNAL REVENUE SERVICE

Setting the Record Straight: What the Executive Branch Can and Cannot Do to Nonprofit Organizations

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Despite recent political rhetoric, federal law sets clear limits on the executive branch's power over nonprofit organizations.

Recent political rhetoric and high-profile threats have sparked anxiety across the nonprofit sector. Many nonprofit leaders have reached out to us with one central question: *Can the federal government revoke our tax-exempt status because of our values, programs, or advocacy?*

The short answer: **no, not without due process and not based on ideology alone**.

At For Purpose Law Group, we believe it is critical for nonprofit organizations to understand the legal protections they are afforded under federal law. Below, we address several misconceptions—and offer factual, cited guidance—to help organizations stay informed and mission-focused.

Misconception: The Executive Branch Can Redefine Which Organizations Qualify for 501(c)(3) Status

Only Congress has the authority to amend the Internal Revenue Code and change the categories of organizations eligible for tax exempt status. The current statute, found in 26 U.S. Code § 501, which includes the 501(c)(3) classifications including charitable, educational, religious, and scientific, as well as other qualifying purposes. No President or federal agency can unilaterally redefine these eligibility criteria.

If your organization operates within those legally defined purposes, its eligibility for tax-exempt status remains protected under federal law.

Misconception: The President Can Direct the IRS to Revoke a Specific Organization's Tax-Exempt Status

This kind of interference is strictly prohibited by law. Under 26 U.S. Code § 7217, it is unlawful for the President, Vice President, or employees of their offices to request—directly or indirectly—that the IRS audit or investigate any specific taxpayer, including nonprofit organizations. The IRS must operate independently and is barred from political influence in enforcement decisions.

Any such attempt to target a specific organization could constitute a federal offense.

Misconception: The IRS Can Instantly Strip a Nonprofit of Its Tax-Exempt Status

The IRS is bound by formal procedures. If the agency believes an organization no longer qualifies for tax-exempt status, it must issue a proposed adverse determination. The organization then has the right to respond, appeal administratively, and, if necessary, seek judicial review. This due process is outlined in IRS Publication 892.

Tax-exempt status cannot be revoked arbitrarily or without proper notice and recourse.

Misconception: Nonprofits Cannot Engage in Advocacy or Lobbying

Nonprofit organizations may legally engage in nonpartisan advocacy and lobbying that supports their mission. While 501(c)(3) entities are prohibited from participating in or intervening in political campaigns on behalf of or in opposition to candidates, they are allowed to educate the public, advocate for policy change, and lobby within established limits.

To provide greater clarity and protection when engaging in lobbying, eligible nonprofits are encouraged to file the **501(h) election** by submitting **IRS Form 5768**. This election replaces the vague "substantial part test" with a clear, expenditure-based standard, giving organizations more confidence and predictability in their advocacy work.

These rights—and tools like the 501(h) election—are fundamental to nonprofit participation in public discourse and systems change.

Misconception: The Government Needs New Oversight Tools to Monitor Nonprofit Spending

In reality, federal oversight mechanisms already exist. Any organization that expends **$750,000 or more in federal awards** during a fiscal year is required to undergo a **Single Audit** under the Uniform Guidance, codified at 2 CFR § 200.501. This independent audit assesses financial compliance and internal controls across the entire organization.

These audits provide a robust, legally required framework for accountability and transparency—and make additional executive oversight mechanisms unnecessary.

A Closer Look: Navigating DEI in a Politicized Climate

Recent debates have raised concern about whether promoting diversity, equity, and inclusion (DEI) might place a nonprofit's tax-exempt status at risk. Let's be clear: **there is no current law, regulation, or court decision that supports revoking a nonprofit's status solely for engaging in DEI programming**.

As of now, neither the IRS nor the federal courts have defined DEI as contrary to public policy. There is no ruling that deems these initiatives unlawful or incompatible with tax-exempt status.

That said, how DEI is incorporated into a nonprofit's structure, strategy, and exempt purpose does matter. This is where mission alignment becomes critical.

When DEI is Central to the Mission

For organizations whose exempt purpose is rooted in anti-discrimination, civil rights, racial equity, or justice work, DEI is likely foundational to both their legal status and identity. In these cases, efforts to scale back DEI may not only be unnecessary—they may actually undermine the organization's integrity and charitable classification. Staying the course is a matter of both principle and legal alignment.

When DEI is a Supporting Priority

For nonprofits whose primary mission lies elsewhere—such as environmental preservation, the arts, or scientific research—DEI efforts may be embedded in hiring, outreach, or internal culture rather than in programmatic delivery. These organizations should not feel compelled to abandon DEI, but it may be appropriate to periodically reassess how those commitments are presented, funded, and communicated externally.

Consider reviewing:

- Your articles of incorporation and stated exempt purpose
- Your public-facing language and IRS Form 990 program descriptions
- Your risk posture related to grants, partners, and political exposure

The goal is not retreat, but reflection—ensuring that DEI activities enhance, rather than blur, your organization's mission.

A Thoughtful, Mission-Aligned Approach

There is no single formula for how a nonprofit should respond to the current climate. But all organizations—whether DEI is their foundation or an important value—can benefit from legal clarity, internal alignment, and strategic planning.

For Purpose Law Group stands ready to help organizations navigate these questions with integrity, thoughtfulness, and compliance. Whether your goal is to stand firm or recalibrate, the path forward should always reflect your mission and the law.

Conclusion

In this moment of heightened scrutiny, it is easy to be distracted or discouraged by political messaging. But your rights as a nonprofit organization are protected by a legal framework that does not shift with the news cycle (or new administrations).

If you have questions about your organization's tax-exempt status, DEI strategy, advocacy work, or federal compliance obligations, we encourage you to reach out to our team for guidance.