

OFFICE OF THE NEW YORK STATE ATTORNEY GENERAL LETITIA JAMES

Helping Nonprofits Navigate Evolving Issues in the Sector

April 28, 2025



Overview

Overview of OAG's Federal Initiatives and Responses

NY Charities Bureau Nonprofit Governance: Strategies and Key Areas for Nonprofit Leadership to Focus On Today

Nonprofits and Recent Developments in Immigration

NY Charities Bureau
“Illegality” and Your Charitable Status



Overview of OAG's Federal Initiatives and Responses

Zoe Levine, Special Counsel for Immigrant Justice



Overview of Federal Initiatives

- ❖ Litigation
- ❖ Amicus briefs
- ❖ Guidance & letters



Immigration

- ❖ Birthright citizenship lawsuit
- ❖ Amicus briefs on temporary protected status (TPS), parole, refugee resettlement, targeting for deportation based on speech
- ❖ Guidance for schools, law enforcement, workplaces, and nonprofits (more on this to follow)

Safeguarding Funding

- ❖ Funding freeze litigation (OMB Directive)
- ❖ Litigation related to funding for NIH, teacher grants, HHS/COVID funding, educational funding, libraries/museums

Federal Agencies, Employees, Programs

- ❖ Litigation over Reductions in Force, DOGE & access to Treasury information, dismantling of Department of Education
- ❖ Amicus briefs on CFPB, Social Security Administration, NLRB, MSPB, and more



And more

- ❖ Lawsuit on Executive Order on elections
- ❖ Amicus brief on gender affirming care
- ❖ Lawsuit on tariffs
- ❖ Amicus brief in support of law firms
- ❖ Amicus brief on trans military ban
- ❖ Guidance “Health care information for transgender, nonbinary, gender nonconforming, and intersex New Yorkers”
- ❖ Guidance on DEI for educational institutions
- ❖ Lawsuit on DEI certifications and education funding



NY Charities Bureau Nonprofit Governance: Strategies and Key Areas for Nonprofit Leadership to Focus On Today

Steven Shiffman, Deputy Enforcement Section Chief



Steps to Take Now to Strengthen Your Organization

- ❖ Analyze how the federal actions apply to your organization
 - ❖ Does it affect your funding, beneficiaries, and programs?
 - ❖ Is the action legally binding?
 - ❖ Has the action been challenged in Court and, if so, what is the status of that challenge?
- ❖ Conduct a risk assessment of your organization
 - ❖ Review your governing documents, your publications, including your website, as well as your programs
 - ❖ Review provisions of federal grants and contracts
 - ❖ Review the conditions for grants you make and benefits you disperse
- ❖ Make sure your organization has up-to-date policies and follows good governance practices
- ❖ Designate a board member or committee to follow developments in law and Executive Orders



Key Areas to Focus On: #1 - Public Filings

- ❖ Public regulatory filings
 - ❖ Should be a priority for you to review
 - ❖ Highlight some areas that could be a federal focus
- ❖ Key documents include:
 - ❖ IRS Form 1023 (exemption application)
 - ❖ IRS Forms 990, 990PF (annual returns)
 - ❖ IRS Form 990-T (unrelated business income tax return – “UBIT”)
 - ❖ IRS Form 941 (quarterly employer return)
 - ❖ IRS Form W-9 (taxpayer ID no. request)



What the Form 990 can teach you

Form 990 **Return of Organization Exempt From Income Tax** OMB No. 1545-0047

Under section 501(c), 527, or 4947(a)(1) of the Internal Revenue Code (except private foundations)

Do not enter social security numbers on this form as it may be made public.

Go to www.irs.gov/form990 for instructions and the latest information.

Department of the Treasury Internal Revenue Service

2024 **Open to Public Inspection**

A For the 2024 calendar year, or tax year beginning 2024, and ending 2024

B Check if applicable: ☐ Amended return ☐ Remeasurement ☐ Initial return ☐ Final return/terminated ☐ Dissolved return ☐ Application pending

C Name of organization: ☐ State business or structure and address (if not listed, mail to donor address) ☐ Nonprofit ☐ City, or town, county or parish, and ZIP or foreign postal code

D Kind of organization: ☐ 501(c)(3) ☐ 501(c)(29) ☐ 501(c)(28) ☐ 501(c)(27) ☐ 501(c)(26) ☐ 501(c)(25) ☐ 501(c)(24) ☐ 501(c)(23) ☐ 501(c)(22) ☐ 501(c)(21) ☐ 501(c)(20) ☐ 501(c)(19) ☐ 501(c)(18) ☐ 501(c)(17) ☐ 501(c)(16) ☐ 501(c)(15) ☐ 501(c)(14) ☐ 501(c)(13) ☐ 501(c)(12) ☐ 501(c)(11) ☐ 501(c)(10) ☐ 501(c)(9) ☐ 501(c)(8) ☐ 501(c)(7) ☐ 501(c)(6) ☐ 501(c)(5) ☐ 501(c)(4) ☐ 501(c)(3)

E EIN: ☐ 50-1000 ☐ 50-1001 ☐ 50-1002 ☐ 50-1003 ☐ 50-1004 ☐ 50-1005 ☐ 50-1006 ☐ 50-1007 ☐ 50-1008 ☐ 50-1009 ☐ 50-1010 ☐ 50-1011 ☐ 50-1012 ☐ 50-1013 ☐ 50-1014 ☐ 50-1015 ☐ 50-1016 ☐ 50-1017 ☐ 50-1018 ☐ 50-1019 ☐ 50-1020 ☐ 50-1021 ☐ 50-1022 ☐ 50-1023 ☐ 50-1024 ☐ 50-1025 ☐ 50-1026 ☐ 50-1027 ☐ 50-1028 ☐ 50-1029 ☐ 50-1030 ☐ 50-1031 ☐ 50-1032 ☐ 50-1033 ☐ 50-1034 ☐ 50-1035 ☐ 50-1036 ☐ 50-1037 ☐ 50-1038 ☐ 50-1039 ☐ 50-1040 ☐ 50-1041 ☐ 50-1042 ☐ 50-1043 ☐ 50-1044 ☐ 50-1045 ☐ 50-1046 ☐ 50-1047 ☐ 50-1048 ☐ 50-1049 ☐ 50-1050 ☐ 50-1051 ☐ 50-1052 ☐ 50-1053 ☐ 50-1054 ☐ 50-1055 ☐ 50-1056 ☐ 50-1057 ☐ 50-1058 ☐ 50-1059 ☐ 50-1060 ☐ 50-1061 ☐ 50-1062 ☐ 50-1063 ☐ 50-1064 ☐ 50-1065 ☐ 50-1066 ☐ 50-1067 ☐ 50-1068 ☐ 50-1069 ☐ 50-1070 ☐ 50-1071 ☐ 50-1072 ☐ 50-1073 ☐ 50-1074 ☐ 50-1075 ☐ 50-1076 ☐ 50-1077 ☐ 50-1078 ☐ 50-1079 ☐ 50-1080 ☐ 50-1081 ☐ 50-1082 ☐ 50-1083 ☐ 50-1084 ☐ 50-1085 ☐ 50-1086 ☐ 50-1087 ☐ 50-1088 ☐ 50-1089 ☐ 50-1090 ☐ 50-1091 ☐ 50-1092 ☐ 50-1093 ☐ 50-1094 ☐ 50-1095 ☐ 50-1096 ☐ 50-1097 ☐ 50-1098 ☐ 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50-1199 ☐ 50-1200 ☐ 50-1201 ☐ 50-1202 ☐ 50-1203 ☐ 50-1204 ☐ 50-1205 ☐ 50-1206 ☐ 50-1207 ☐ 50-1208 ☐ 50-1209 ☐ 50-1210 ☐ 50-1211 ☐ 50-1212 ☐ 50-1213 ☐ 50-1214 ☐ 50-1215 ☐ 50-1216 ☐ 50-1217 ☐ 50-1218 ☐ 50-1219 ☐ 50-1220 ☐ 50-1221 ☐ 50-1222 ☐ 50-1223 ☐ 50-1224 ☐ 50-1225 ☐ 50-1226 ☐ 50-1227 ☐ 50-1228 ☐ 50-1229 ☐ 50-1230 ☐ 50-1231 ☐ 50-1232 ☐ 50-1233 ☐ 50-1234 ☐ 50-1235 ☐ 50-1236 ☐ 50-1237 ☐ 50-1238 ☐ 50-1239 ☐ 50-1240 ☐ 50-1241 ☐ 50-1242 ☐ 50-1243 ☐ 50-1244 ☐ 50-1245 ☐ 50-1246 ☐ 50-1247 ☐ 50-1248 ☐ 50-1249 ☐ 50-1250 ☐ 50-1251 ☐ 50-1252 ☐ 50-1253 ☐ 50-1254 ☐ 50-1255 ☐ 50-1256 ☐ 50-1257 ☐ 50-1258 ☐ 50-1259 ☐ 50-1260 ☐ 50-1261 ☐ 50-1262 ☐ 50-1263 ☐ 50-1264 ☐ 50-1265 ☐ 50-1266 ☐ 50-1267 ☐ 50-1268 ☐ 50-1269 ☐ 50-1270 ☐ 50-1271 ☐ 50-1272 ☐ 50-1273 ☐ 50-1274 ☐ 50-1275 ☐ 50-1276 ☐ 50-1277 ☐ 50-1278 ☐ 50-1279 ☐ 50-1280 ☐ 50-1281 ☐ 50-1282 ☐ 50-1283 ☐ 50-1284 ☐ 50-1285 ☐ 50-1286 ☐ 50-1287 ☐ 50-1288 ☐ 50-1289 ☐ 50-1290 ☐ 50-1291 ☐ 50-1292 ☐ 50-1293 ☐ 50-1294 ☐ 50-1295 ☐ 50-1296 ☐ 50-1297 ☐ 50-1298 ☐ 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#2 - “Operated Exclusively” for a Charitable Purpose

An organization is not “operated exclusively” for charitable purposes if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

❖ Review:

❖ Form 990

❖ Part I, Q. 1; Part III, Q. 4

❖ Charitable mission

❖ Program Services & Activities

❖ Form 1023

❖ Charitable mission

❖ Website

❖ Programs & activities

Part III Statement of Program Service Accomplishments
Check if Schedule O contains a response or note to any line in this Part III ☐

1 Briefly describe the organization's mission:

2 Did the organization undertake any significant program services during the year which were not listed on the prior Form 990 or 990-EZ? ☐ Yes ☐ No
If "Yes," describe these new services on Schedule O.

3 Did the organization cease conducting, or make significant changes in how it conducts, any program services? ☐ Yes ☐ No
If "Yes," describe these changes on Schedule O.

4 Describe the organization's program service accomplishments for each of its three largest program services, as measured by expenses. Section 501(c)(3) and 501(c)(4) organizations are required to report the amount of grants and allocations to others, the total expenses, and revenue, if any, for each program service reported.

4a (Code: _____) (Expenses \$ _____ including grants of \$ _____) (Revenue \$ _____)



#3 - Political Activity

Form 990, Part IV, Line 3 and/or Schedule C, Part I

- ❖ Ask whether or not the nonprofit was involved in any prohibited political activity in the prior year.
 - ❖ “participating in, or intervening in, any political campaign on behalf of (or in opposition to) any candidate for elective public office”
- ❖ Review:
 - ❖ Website, invitations, emails
 - ❖ Activities, events and use of your space
 - ❖ Employees’ activities at work



#4 - Unrelated Business Income Tax

- ❖ Is all your income related to your charitable purpose?
- ❖ Test is whether the business that generates it is substantially related to your exempt purpose
 - ❖ NOT whether the income will be used for your charitable purpose
- ❖ Tax is owed on income if you regularly carried on trade or business not substantially related to exempt purpose
 - ❖ NYU's pasta business – Mueller Macaroni
- ❖ Review:
 - ❖ Revenue sources
 - ❖ Form 990-T



#5 – Control of Joint Ventures and LLCs

Form 990, Part VI, Question 16

- ❖ In this tax year, the organization had both:
 - ❖ 1. Followed a written policy or procedure that required the organization to ensure that the terms of the joint venture or arrangement were adequate to protect the organization's exempt status; and
 - ❖ 2. Taken steps to safeguard the organization's exempt status in carrying out the joint venture or arrangement.
- ❖ “The non-profit should lose its tax-exempt status if it cedes control to a for-profit entity.” *St. David's Health Care System v. US*, 349 F. 3d 232, 239 (5th Cir. 2003); Rev. Ruling 2004-51
 - ❖ Joint venture must support charitable purpose
 - ❖ Manager cannot be controlled by for-profit entity



#5 – Control of Joint Ventures and LLCs

- ❖ Review:

- ❖ Joint venture agreements
 - ❖ Board composition
 - ❖ Termination provisions
- ❖ Management agreements
 - ❖ Is the management agency:
 - ❖ Independent?
 - ❖ Related to the for-profit
- ❖ Form 1023 mission v. JV mission
- ❖ Substantial part of operations?
 - ❖ Unrelated Business Income Tax



#6 - Grants reporting and oversight

- ❖ Non-profit organizations that make grants must ensure that the grants:
 - ❖ Further their exempt purpose
 - ❖ Do not provide more than an incidental private benefit
 - ❖ Are otherwise consistent with 501(c)(3)
- ❖ Heightened requirements for private foundations
- ❖ Review:
 - ❖ Grant criteria and how applied
 - ❖ Recipients and their reporting to you
 - ❖ Reporting on Form 990, Schedule I
 - ❖ Monitoring of funds (Part I, Line 2)
 - ❖ Description of how ensure grants used for proper purposes (Part IV)



#7 - Foreign Expenditures and Receipts

- ❖ Nonprofits may provide services overseas, either directly or through grants, but need to report it carefully and need to be mindful of heightened oversight and regulation
 - ❖ Ensure that grants are used for charitable purpose
 - ❖ Anti-terrorism requirements
 - ❖ Treasury, OFAC (Office of Foreign Assets Control)
 - ❖ State Department
 - ❖ Heightened requirements for foundations
- ❖ Section 117 of Higher Education Act requires colleges to report all gifts or contracts from foreign sources valued at more than \$250k in a calendar year
- ❖ Form 990, Schedule F – Reporting of Foreign Expenditures and Accounts
 - ❖ Revenues or expenses over \$10K
 - ❖ Investments over \$100k
 - ❖ Grants to foreign entities over \$5k
 - ❖ Grants to domestic entities for foreign beneficiaries over \$5k



#8 - Employees

- ❖ Misclassification issues

- ❖ IRS has been stepping up enforcement over misclassification of employees
 - ❖ Misclassification of employees as “independent contractors”
 - ❖ Payment of employees for other services as contractor
- ❖ Failure to report, withhold, deposit employment taxes
 - ❖ Personal liability for responsible persons

- ❖ Travel and expense payments and reimbursements

- ❖ Accountable plan

- ❖ Review:

- ❖ Contracts
- ❖ Travel and expense policies and procedures
 - ❖ Existence
 - ❖ Adequacy
 - ❖ Testing compliance
- ❖ 1099s



#9 - Vendor Relationships

- ❖ W-9

- ❖ Request for Taxpayer ID and Certification
- ❖ “The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me)”

- ❖ 1099s show vendor and contractor payments

- ❖ Directors receiving pay should get 1099-NEC

- ❖ Review:

- ❖ Vendor contracts and invoices
- ❖ W-9s from all vendors (over \$600)
- ❖ 1099-NECs to all vendors



Governance and Policy Check

- ❖ Part VI of the 990 asks a series of questions concerning an organization's governance
- ❖ Calls for information on the governing body
- ❖ Asks for information concerning the policies the organization has in place

Form 990 (2018) Page 6

Part VI Governance, Management, and Disclosure. For each "Yes" response to lines 2 through 7b below, and for a "No" response to line 8a, 8b, or 10b below, describe the circumstances, processes, or changes on Schedule O. See instructions. Check if Schedule O contains a response or note to any line in this Part VI ☐

Section A. Governing Body and Management

	Yes	No
1a Enter the number of voting members of the governing body at the end of the tax year		
1b If there are material differences in voting rights among members of the governing body, or if the governing body delegated broad authority to an executive committee or similar committee, explain on Schedule O.		
2 Did any officer, director, trustee, or key employee have a family relationship or a business relationship with any other officer, director, trustee, or key employee?	2	
3 Did the organization delegate control over management duties customarily performed by or under the direct supervision of officers, directors, trustees, or key employees to a management company or other person?	3	
4 Did the organization make any significant changes to its governing documents since the prior Form 990 was filed?	4	
5 Did the organization become aware during the year of a significant diversion of the organization's assets?	5	
6 Did the organization have members or stockholders?	6	
7a Did the organization have members, stockholders, or other persons who had the power to elect or appoint one or more members of the governing body?	7a	
7b Are any governance decisions of the organization reserved to (or subject to approval by) members, stockholders, or persons other than the governing body?	7b	
8 Did the organization contemporaneously document the meetings held or written actions undertaken during the year by the following:		
a. The governing body?	8a	
b. Each committee with authority to act on behalf of the governing body?	8b	
9 Is there any officer, director, trustee, or key employee listed in Part VII, Section A, who cannot be reached at the organization's mailing address? If "Yes," provide the names and addresses on Schedule O.	9	

Section B. Policies (This Section B requests information about policies not required by the Internal Revenue Code.)

	Yes	No
10a Did the organization have local chapters, branches, or affiliates?	10a	
b. If "Yes," did the organization have written policies and procedures governing the activities of such chapters, affiliates, and branches to ensure their operations are consistent with the organization's exempt purposes?	10b	
11a Has the organization provided a complete copy of this Form 990 to all members of its governing body before filing this form?	11a	
b. Describe on Schedule O the process, if any, used by the organization to review this Form 990.		
12a Did the organization have a written conflict of interest policy? If "No," go to line 13.	12a	
b. Were officers, directors, or trustees, and key employees required to disclose annually interests that could give rise to conflicts?	12b	
c. Did the organization regularly and consistently monitor and enforce compliance with the policy? If "Yes," describe on Schedule O how this was done.	12c	
13 Did the organization have a written whistleblower policy?	13	
14 Did the organization have a written document retention and destruction policy?	14	
15 Did the process for determining compensation of the following persons include a review and approval by independent persons, comparability data, and contemporaneous substantiation of the deliberation and decision?		
a. The organization's CEO, Executive Director, or top management official.	15a	
b. Other officers or key employees of the organization.	15b	
If "Yes" to line 15a or 15b, describe the process on Schedule O. See instructions.		
16a Did the organization invest in, contribute assets to, or participate in a joint venture or similar arrangement with a taxable entity during the year?	16a	
b. If "Yes," did the organization follow a written policy or procedure requiring the organization to evaluate its participation in joint venture arrangements under applicable federal tax law, and take steps to safeguard the organization's exempt status with respect to such arrangements?	16b	



Documentation and Board Review

8 Did the organization contemporaneously document the meetings held or written actions undertaken during the year by the following:

a The governing body?

b Each committee with authority to act on behalf of the governing body?

8a		
8b		

11a Has the organization provided a complete copy of this Form 990 to all members of its governing body before filing the form?

b Describe on Schedule O the process, if any, used by the organization to review this Form 990.

11a	



Resources for Keeping Informed

- ❖ Attorney General Guidance
 - ❖ NY OAG
 - ❖ Multistate guidance
- ❖ Umbrella organizations are great resources for tracking EOs and recent developments
 - ❖ National Council of Nonprofits
 - ❖ Independent Sector
- ❖ Your own legal counsel



Office of the New York State
Attorney General

Letitia James | Attorney General



Office of the New York
Governor

Kathy Hochul | Governor

Joint Office of the Governor and Office of the New York State Attorney General Guidance to Private and Non-Profit Organizations and Entities

February 14, 2025

Introduction

This guidance document is intended to provide information to private and nonprofit entities like social services agencies and providers (including homeless shelters, domestic violence shelters, and other residential facilities as well as non-residential and drop-in sites for social services); houses of worship such as churches, synagogues, mosques, and temples; medical and healthcare facilities; and other entities that provide community services and spaces, in evaluating how to respond to requests from federal immigration authorities while protecting the rights of their residents, clients, patients, members, and staff.



Materials

- Documents:

- NY OAG Charities Bureau Guidance on Political Activity and Lobbying
- NY OAG Charities Bureau “Right From the Start: Responsibilities of Directors of Not-For-Profit Corporations”
- NY OAG Charities Bureau Guidance on Internal Controls and Financial Accountability
 - (All documents above are available here) <https://ag.ny.gov/resources/organizations/charities-nonprofits-fundraisers/governance>
- IRS Publication 598 – Tax on Unrelated Business Income of Exempt Organizations
 - <https://www.irs.gov/pub/irs-pdf/p598.pdf>
- IRS Rev. Ruling 2004-51
 - <https://www.irs.gov/pub/irs-irbs/irb04-51.pdf>
- St. David’s Health Care System v. US, 349 F. 3d 232 (5th Cir. 2003)
- C.F. Mueller Co. v. Commissioner of Internal Revenue, 190 F.2d 120 (3d Cir. 1951)

- Links:

- NY OAG Governance FAQs:
 - <https://ag.ny.gov/resources/organizations/charities-nonprofits-fundraisers/governance>
- Council of Nonprofits Executive Order Tracking:
 - www.councilofnonprofits.org/files/media/documents/2025/chart-executive-orders.pdf
 - www.councilofnonprofits.org/impacts-recent-executive-orders-nonprofits
- Independent Sector Policy Tracking:
 - <https://independentsector.org/policy/tracking-the-policy-landscape/>



Nonprofits and Recent Developments in Immigration

Zoe Levine, Special Counsel for Immigrant Justice



- ❖ Sensitive places policy/directive
- ❖ Preparing for ICE enforcement
- ❖ Resources



Sensitive Places Policy

- ❖ Previously, DHS policy limited civil immigration enforcement activity at “sensitive locations”
- ❖ Sensitive places included schools; healthcare facilities; places of worship; childcare centers; social services establishments of all kinds
- ❖ This Administration rescinded these policies and its new directives state that it entrusts decisions on enforcement to individual officers and their “common sense.”



Litigation Over New Directive

- ❖ Several lawsuits brought by religious institutions in DC and MD, and by a school district in Colorado.
- ❖ Varied results to date as these cases move through courts, with only one issuing preliminary relief for houses of worship



General Guidance for Nonprofits related to Immigration Enforcement

- ❖ Private and nonprofit entities should know their rights and responsibilities for their entity and the people they serve and prepare for possible ICE enforcement
- ❖ Important to understand the law and develop a policy.
- ❖ Helpful to obtain counsel to advise, assist, and train.
- ❖ This is not legal advice—each institution should consider developing policies tailored to their situation that account for applicable laws, regulations, policies, contract terms and other considerations.



Checklist

- ❖ Know the law
- ❖ Know your space
- ❖ Establish a policy / protocol
- ❖ Train frontline staff
- ❖ Designate a point of contact (ideally counsel) to assess requests and advise

Reminders

- ❖ Requests could come in person or in writing, by formal or informal channels
- ❖ Different law enforcement agencies and officials are involved in immigration enforcement (FBI, ATF, HSI, DEA, etc.), and sometimes local officials
- ❖ Variations in applicable laws and policies



Key Legal Concepts

- ❖ Fourth Amendment
 - ❖ Public versus private spaces
 - ❖ Administrative versus judicial warrant
- ❖ Fifth Amendment right to remain silent
- ❖ Protecting constitutional rights and upholding responsibilities to beneficiaries and staff *versus* obstruction or harboring
- ❖ Certain privacy protections may apply (for ex. HIPAA (health), FERPA (education), attorney-client privilege)



Resources

- ❖ All Attorney General guidance related to immigration is available at:
<https://ag.ny.gov/resources/individuals/immigrants-rights>
- ❖ Guidance for local law enforcement, school districts, workers and employers, nonprofits
- ❖ Other sources of information and guidance: New York Lawyers for the Public Interest; National Immigration Law Center; National Council of Nonprofits



NY Charities Bureau “ILLEGALITY” AND YOUR CHARITABLE STATUS

James Sheehan, Bureau Chief



“ILLEGALITY”

- 18 U.S.C. 1001-criminal statute
- Prosecutable by US Department of Justice,
- Whoever “knowingly and willfully”
 - “Makes any materially false, fictitious, or fraudulent statement or representation;”
or
 - “Makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry.”
 - In any matter within the jurisdiction of executive branch
- IRS Filings, documents, denials (including denials of knowledge)
- Conversation with federal agents, examiners, auditors, agencies
- Eligibility and payment certifications



ADDRESSING CIVIL ALLEGATIONS OF ILLEGALITY FOR CHARITIES AND THEIR FIDUCIARIES

- ❖ “organized and operated exclusively for charitable purposes”
- ❖ Not inconsistent with fundamental public policy
- ❖ Charity does not engage in or support illegal activity
- ❖ Charity does not engage in political activities
- ❖ Much of the IRS guidance on this topic is now forty years old and has not been updated.



Charitable Purpose (“organizational”) or Activities (“operational”) tests

- ❖ 1) statement of purpose (organizational)-where is it (1023 form? charter, 990, bylaws?)
- ❖ 2) activities (operational)-consistent with purpose? legal?
 - ❖ “activities which accomplish one or more of such exempt purposes specified in § 501(c)(3).” 26 C.F.R. § 1.501(c)(3)-1”
 - ❖ “must examine the **manner in which those activities are carried out** in order to determine their true purpose.” Airlie Foundation v. IRS (DDC 2003)
- ❖ 3) board authorization, reviews of activities?
- ❖ 4) compliance by staff, volunteers with board direction on activities



Making your record for preserving 501(c)(3) tax exemption during examination

- ❖ Need professional advice from first examination contact
 - ❖ Evidence of direct or indirect requests by senior executives
 - ❖ Returns being examined; issues identified in preexamination; explain additional issues being examined
 - ❖ Information document request form 4564
 - ❖ Advance notice of third party contacts; request written summary of potential issues
 - ❖ Report of examination proposing revocation
 - ❖ Internal Revenue Manual explains process (available at [IRS.gov](https://www.irs.gov))



Making your record for tax exemption

- ❖ Code section 7428- concurrent jurisdiction to the Court of Federal Claims, the United States Tax Court and the District Court to review a final determination by the Secretary of the Treasury regarding the tax exempt status of an organization under § 501(c)(3).
- ❖ The scope of review is limited to the administrative record
- ❖ Courts reviewing a final determination of tax exempt status by the IRS must consider "the overall picture presented by the administrative record."
- ❖ Airlie Foundation v. IRS



3/7/25 Executive Order: “Substantial illegal purpose” (“Organizational”)

- ❖ Executive Order “Restoring Public Service Loan Forgiveness,” March 7, 2025
- ❖ Aid or abet violations of federal immigration laws (8 U.S.C. 1325-Improper entry)
- ❖ Support terrorism (8 USC 1189 Treasury designation)
- ❖ Aid or abet illegal discrimination
- ❖ Child abuse
- ❖ Violate state tort laws (including those against trespassing, disorderly conduct, or public nuisance)



Illegal: “Inconsistent with Fundamental Public Policy”

- ❖ Bob Jones University v. United States (1982)
- ❖ “not be contrary to established public policy”
- ❖ “not be so at odds with common community conscience as to undermine any (other) public benefit”
- ❖ discrimination on the basis of race a violation of a "public policy so fundamental as to justify denial of charitable status to any organization otherwise described in section 501(c)(3)." (IRS)



Advocacy is a Charitable Activity

- ❖ Treasury Regulation Section 1.501(c)(3)-1(d)(2)
- ❖ Organization can qualify under IRC Section 501(c)(3) if, in carrying out its primary purpose, the organization advocates for social or civil change or opines on controversial issues with the intent to mold public opinion or gain public acceptance so long as it is not an “**action organization.**”
- ❖ Very nuanced standard-significant discretion for the examiner. Not an “action organization” if only “grass roots lobbying.” Review Treasury Regulation 1.501 (c)(3)(iv) and IRS Audit Technique Guide for Public Charities pp. 35-44



Action Organization Exclusion

- ❖ “Action organization” not entitled to 501(c)(3) exemption if:
 - ❖ a **substantial part of its activities** is **attempting to influence legislation** by propaganda or otherwise.
- ❖ Contacts, or urges the public to contact, members of a legislative body for the purpose of proposing, supporting, or opposing legislation;
- ❖ Advocates the adoption or rejection of legislation.
- ❖ OK:
 - ❖ “We urge policymakers — including Senators John Cornyn and Ted Cruz — to prioritize dedicated federal funding for water security, ecological restoration” for the Rio Grande
- ❖ Sign this petition/send this letter



Charity Engaged in Illegal Activity

- ❖ organization advocating world peace and disarmament did not qualify for exemption.
- ❖ nonviolent, but its main form of activism was *sponsoring* protest demonstrations "in which demonstrators are *urged to commit violations* of local ordinances and breaches of public order."
- ❖ Rev. Rul. 75-384, 1975-2 C.B. 204
- ❖ Checklist:
 - ❖ Substantial part of activities
 - ❖ Guidelines/training for entity sponsored protest demonstrations
 - ❖ Entity or leadership "urged (participants) to commit violations"
 - ❖ Authorized by directors or senior managers
 - ❖ Actual or purported authority to act for organization
 - ❖ Funding for illegal activities
- ❖ Materials:
 - ❖ Topic L. 1994 (EO CPE) Topic J. 1985 (EO CPE)



ILLEGAL ACTIVITY?

- ❖ Private and state challenges:
- ❖ **Energy Transfer v. Greenpeace** \$660 million verdict-defamation, trespass, nuisance, civil conspiracy about Dakota Access pipeline
- ❖ Do No Harm settlements (<https://donoharmmedicine.org/>)
- ❖ Protests near “critical infrastructure”-pipelines, gas, electricity, water, mining, telecommunications (2024 Fl.) “mere entry where prohibited”
- ❖ Texas Consumer Protection investigation; Annunciation House TRO requested to shut down (before Tx Supreme Court)(2025)



Does Not Support Terrorism

- ❖ Complex rules for humanitarian assistance, financial transfers, working with foreign governments, sanctioned organizations, permissible contributions
- ❖ Stop Terror-Financing and Tax Penalties on American Hostages Act- died in last Congress but resubmitted-
- ❖ No checklist, but see Voluntary Best Practices (particularly Section VI) U.S. Department of the treasury anti-terrorist financing guidelines: voluntary best practices for U.S.-based charities (2006)



Charity and Its Governing Body Should Make Record to Demonstrate Compliance with Duties

- ❖ Board good governance standards(Section VI of IRS 990)
- ❖ Designate board member or committee to follow developments in law and Executive Orders
- ❖ Seven Elements of Effective Compliance Program
 - ❖ Implementing written policies, procedures and standards of conduct
 - ❖ Designating a compliance officer and compliance committee
 - ❖ Conducting effective training and education
 - ❖ Developing effective lines of communication
 - ❖ Conducting internal monitoring and auditing
 - ❖ Enforcing standards through well-publicized disciplinary guidelines
 - ❖ Responding promptly to detected offenses and undertaking corrective action
- ❖ (National Council of Nonprofits tracking)
<https://www.councilofnonprofits.org/files/media/documents/2025/chart-executive-orders.pdf>



Oversight of Fiscal Sponsorship Arrangements

- Fiscal sponsor is responsible:
- to assure that purposes of sponsored organization are consistent with the sponsor's purposes
- To assure that the activities of the sponsored organization comply with the restrictions on illegality in prior slides
- To assure that the board of the fiscal sponsor has exercised reasonable financial and governance oversight over the sponsored organization



CHARITIES BUREAU

❖ Here to be helpful

- ❖ Tell us issues of concern
- ❖ Call us with questions about registration, reporting
- ❖ Follow our AG guidance documents
- ❖ Phone number (212)416-8401
- ❖ Email: charities.bureau@ag.ny.gov



Materials:

- ❖ Executive Order “Restoring Public Service Loan Forgiveness,” March 7, 2025
- ❖ Airlie Foundation v. IRS (DDC 2003)
(https://scholar.google.com/scholar_case?case=16876267849322745758&q=airlie+foundation+inc&hl=en&as_sdt=3,33)
- ❖ Board good governance standards (Section VI of IRS 990)
- ❖ U.S. Department of the Treasury Anti-Terrorist Financing Guidelines: Voluntary Best Practices for U.S.-based charities (2006)
- ❖ Risk Matrix for the Charitable Sector (Office of Foreign Assets Control)
- ❖ Topic L. 1994 (EO CPE) Topic J. 1985 (EO CPE) Illegal Activities)
- ❖ IRS Tech. Adv. Mem. 89-10-001 (Mar. 20, 1989).
- ❖ “The Illegality Doctrine and 501(c)(3) Organizations” Congressional Research Service 2024
(<https://www.congress.gov/crs-product/IF12739>)
- ❖ Do No Harm settlements (<https://donoharmmedicine.org/>)

