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### **Get Ready for New Federal Government Policies and Enforcement Priorities**

Nonprofits and their communities are gearing up for the profound changes in our federal government that will come in 2025. The incoming administration has discussed plans for intensive oversight and investigation of organizations perceived as opposing its policies or supporting certain communities. Lawyers Alliance for New York and New York Lawyers for the Public Interest have partnered to educate, advise, and represent nonprofit organizations during this significant transition. **This legal alert identifies a few ways your organization can prepare before Inauguration Day.**

- A. Make sure your organization has adequate Directors & Officers (D&O) insurance:** In the event of a federal investigation or enforcement action, D&O insurance can cover defense costs. But not all D&O policies provide adequate coverage. Even if you already have a D&O policy, speak with your broker to make sure it covers advancement of defense costs for the organization, its directors, officers and management in the event of investigations by the federal government.

*Why is this important?* Nonprofits may face government investigations and federal enforcement actions as a result of changing federal policies and priorities. This could involve, for instance, inquiries regarding the organization's compliance with its federal tax-exempt status, or with other federal laws involving antidiscrimination, working with non-U.S. governments or entities, or assisting undocumented individuals.

*Other useful information:* While D&O policies may have exclusions for penalties imposed by government regulators, having a policy that covers defense costs can help an organization mount the best possible defense in any such investigation, without draining the organization's resources to cover defense costs. It may also reassure officers and directors that they are not putting themselves at undue risk in these uncertain times.

- B. Review Conflict of Interest Policy compliance:** Make sure the conflict of interest policy is legally compliant, up to date and enforced (consider training board members on it if you have not done so recently), and scrutinize any transactions with insiders and executive compensation reported on the IRS 990. Make sure the board is approving executive compensation, after reviewing compensation at comparable organizations.

*Why is this important?* If the IRS finds that a tax-exempt organization is operating to benefit key insiders, the IRS can impose financial penalties and even revoke tax exempt status.

*Other useful information:*

- Lawyers Alliance's legal alert on Conflict of Interest Policies is available at [https://www.lawyersalliance.org/userFiles/uploads/legal\\_alerts/Conflict\\_of\\_Interest\\_Policies\\_Legal\\_Alert\\_June\\_2019\\_FINAL.pdf](https://www.lawyersalliance.org/userFiles/uploads/legal_alerts/Conflict_of_Interest_Policies_Legal_Alert_June_2019_FINAL.pdf)

- Register for Lawyers Alliance’s on-demand webinar, Good Governance: Developing a Conflicts of Interest Policy, at <https://lawyersalliance.org/recorded-webinars>

**C. Other tax exempt status compliance:** Be sure your organization’s annual 990’s are up to date and accurate. Make sure the organization is reporting all legislative lobbying on the IRS 990 and staying within lobbying limits for a 501(c)(3) organization. If the organization has a 501(c)(4) affiliate or acts as a fiscal sponsor for other organizations, review the relationship with an attorney. Make sure the Certificate of Incorporation accurately reflects the organization’s activities, does not authorize the organization to engage in activities inconsistent with 501(c)(3) status, and has the language required by the IRS regarding dissolution.

*Why is this important?* Strict compliance with tax exempt status requirements is essential to protect the organization’s tax exempt status in the event of an audit or investigation.

**D. Sensitive organization and client data:** Do an internal audit of any information your organization shares with government and nongovernment funders. Speak with an attorney to understand your information sharing obligations under existing funder agreements and relevant privacy laws. Talk to any funders with which you have shared sensitive information about the organization or its clients. Ask them what they will do with that information if the federal government requests it, and advocate for the funders to keep it confidential to the extent possible. In addition, review all vendor contracts and Service Legal Agreements or End User License Agreements with online services or software providers to ensure proper protections for cybersecurity and confidentiality.

*Why is this important?* Government and private funders often require nonprofits to share detailed information about the organization and about the people the organization serves. In addition, client and organizational data is increasingly stored by third party vendors. In some instances, this may include highly sensitive information, such as about the organization’s finances or strategies, and about individuals’ immigration status, sexual orientation, medical history, etc. Changing federal government priorities could lead the federal government to start trying to access some of this information.

*Other useful information:* Lawyers Alliance’s legal alert Does Your Government Contract Allow You to Safeguard Clients’ Confidential Information? is available at [https://lawyersalliance.org/userFiles/uploads/legal\\_alerts/Government\\_Contracts\\_Confidentiality\\_Clauses\\_Legal\\_Alert.pdf](https://lawyersalliance.org/userFiles/uploads/legal_alerts/Government_Contracts_Confidentiality_Clauses_Legal_Alert.pdf)

**E. Be aware of federal funding restrictions:** Review the organization’s federal contracts with an attorney to ensure you are aware of any strings attached to your federal funds, including antidiscrimination requirements and the extent to which federal agencies may audit the program or add new obligations. Know what the termination provisions in your contracts say, including whether and how you can terminate the contract and also what the financial consequences will be to your organization if the contract is terminated.

*Why is this important?* Organizations that receive federal funding may be contractually required to provide the federal government with information about their programs and their clients. They are also required to abide by federal antidiscrimination laws, which

prohibit them from targeting their services on the basis of race, color or national origin. There may also be other strings attached to their federal funds. It is also possible that the efforts to downsize federal government will result in termination of a nonprofit's federal funding.

*Other useful information:* Federal funds may be included in state and local government contracts. Ask your government funders if you do not know whether your contracts contain federal funds.

***This alert is meant to provide general information only, not legal advice. If you have any questions about this Alert please contact Lawyers Alliance Senior Policy Counsel Laura Abel at [label@lawyersalliance.org](mailto:label@lawyersalliance.org) or Heidi Kim, Deputy Director, Pro Bono Programs at NYLPI at [hkim@nylpi.org](mailto:hkim@nylpi.org). For information about our organizations visit [www.lawyersalliance.org](http://www.lawyersalliance.org) or [www.nylpi.org](http://www.nylpi.org).***

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NYLPI's Pro Bono Clearinghouse connects innovative and impactful nonprofit organizations with free legal services by drawing on volunteer lawyers from New York's most prestigious law firms and corporate law departments. Legal projects placed through the Clearinghouse provide high-quality legal solutions to organizations that strengthen communities, serve underrepresented New Yorkers, and combat systemic inequalities. It helps nonprofits and community groups thrive by providing resources that help organizations overcome legal obstacles, build capacity, and develop stronger and more effective programs. Through educational workshops, trainings for nonprofit leaders, individual counseling and a series of publications, the Clearinghouse is at the forefront of helping nonprofits maximize their performance and their impact on our community.

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