Patterson Belknap

Patterson Policy Watch – A Resource for the Nonprofit Sector

Welcome to the *Patterson Policy Watch*, which tracks key legal and policy developments that matter to the nonprofit sector. In response to the rapidly evolving landscape under the new presidential administration, Patterson Belknap's Tax-Exempt Organizations Group is highlighting executive actions, agency directives, legislative updates, and judicial responses that have the potential to impact nonprofit organizations and the communities they serve.

Below is a digest of select developments from the past week through August 17, 2026, which are organized broadly by issue area. We note that this is not a comprehensive list of all updates that may potentially be relevant to tax-exempt organizations. We will continue to provide regular updates to the *Patterson Policy Watch* to help you anticipate and navigate policy and legal developments. You can also view prior editions of the *Patterson Policy Watch* here.

DEI

- August 7: The American Alliance for Equal Rights (AAER), a nonprofit organization founded by Edward Blum, the founder of Students for Fair Admission, filed a Form 13909, Tax-Exempt Organization Complaint (Referral), with the Internal Revenue Service (IRS) to request an investigation into the activities and tax-exempt status of Avenue Foundation (Avenue), a Section 501(c)(3) organization public charity that supports small businesses in Oregon. AAER alleges that Avenue is intentionally discriminating against white small business owners because Avenue restricts eligibility for one of its grant programs to small businesses that are least 50% owned by individuals who are black, indigenous, or people of color. AAER claims that Avenue's "use of race as a requirement for selection . . . is textbook discrimination" and grounds for the IRS to revoke Avenue's tax-exempt status.
    - AAER filed a similar complaint against three other foundations on April 1, 2025, as covered in the April 8, 2025 issue of the *Patterson Policy Watch*.

Education

- August 17: The Department of Justice (DOJ) announced a compliance review investigation into the College of William & Mary (W&M) to determine whether W&M's scholarships and student benefits include race-based criteria that violate Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, and national origin in any program or activity receiving federal financial assistance. In its letter to W&M, the DOJ stated that its investigation will focus on scholarships, financial aid, recruitment, and educational support. The DOJ also indicated that it has reviewed "public-facing materials" that demonstrate that W&M "offers or administers scholarships and other educational benefits that may include unlawful racial criteria" and that it has reason to believe that W&M may be awarding other scholarships, forms of financial aid, and benefits that include race-based criteria.

Federal Government/Administrative Procedure

- August 17: The White House completed its review of a proposed rule that would provide guidance on the application of the fundamental public policy against racial discrimination in schools. According to the abstract listed on the Office of Information and Regulatory Affairs' website, the proposed regulations "would amend existing regulations under section 501(c)(3) [of the Internal Revenue Code of 1986, as amended] to clarify that certain schools that discriminate on the basis of race are not operated exclusively for charitable purposes." The intent to issue such guidance was included in the Internal Revenue Service's 2025–26 Priority Guidance Plan, which was covered in the October 7, 2025 and June 30, 2026 issues of the *Patterson Policy Watch*.

Health

- August 11: The Department of Health and Human Services (HHS) announced a final rule prohibiting the use of federal Medicaid funds to pay for "sex-rejecting procedures" for individuals under the age of 18 and federal Children's Health Insurance Program (CHIP) funds to pay for such procedures for individuals under the age of 19. The final rule defines "sex-rejecting procedures" as "any pharmaceutical or surgical intervention that attempts to align an individual's physical appearance or body with an asserted identity that differs from the individual's sex," such as puberty blockers, cross-sex hormones, and surgical procedures, subject to certain exclusions. For beneficiaries receiving cross-sex hormone therapy as of the effective date of the final rule, which is October 13, 2026, states may continue to claim federal financial participation for those medications for up to six months. The final rule does not affect federal funding for mental health services, does not prohibit states from covering these procedures with state-only funds, and does not prevent the use of other non-federal funding, such as private insurance.
    - The final rule implements the January 28, 2025 executive order, entitled "Protecting Children from Chemical and Surgical Mutilation," which was covered in the February 10, 2025 issue of the *Patterson Policy Watch*.

Judicial Watch

As legal challenges to executive actions continue to grow, and as the DOJ has begun to initiate actions in court to enforce the administration's priorities, we are tracking developments in key cases that have the potential to most directly impact nonprofit organizations across the sector.

Denial of Congressionally Appropriated Funds

A growing number of nonprofit grantees have sued the federal government (and their agents) for improperly withholding Congressionally appropriated funds. Updates in cases we are following in this area include:

- *State of Washington v. United States Department of Housing and Urban Development* (District of Rhode Island): In a case related to *State of Washington v. United States Department of Housing and Urban Development* (covered most recently in the July 7, 2026 issue of the *Patterson Policy Watch*), on July 7, 2026, Plaintiff States sued the Department of Housing and Urban Development (HUD) challenging the June 1, 2026 Notice of Funding Opportunity (NOFO) for the Continuum of Care Program, which seeks to implement a cap on permanent housing projects, setting aside money that Congress has reserved for these permanent projects. Plaintiffs argue that the June 1, 2026 NOFO violates the Administrative Procedure Act because it is in excess of HUD's statutory authority, is arbitrary and capricious, and is contrary to law. Plaintiffs request that the District Court declare the June 1, 2026 NOFO unlawful, set it aside, and preliminarily and permanently enjoin Defendants from enacting the June 1, 2026 NOFO.

- On July 17, 2026, Plaintiffs filed a motion for summary judgment, or in the alternative a motion for a preliminary injunction, arguing that Defendants' June 1, 2026 NOFO for the Continuum of Care Project should be permanently set aside by August 10, 2026 to avoid irreparable harm to Plaintiffs or at least that Defendants should be preliminarily enjoined from enacting them.
- On August 7, 2026, the District Court granted in part Plaintiffs' motion for summary judgment. The District Court found that HUD issued the June 1, 2026 NOFO in a procedurally invalid manner but declined to address Plaintiffs' remaining challenges to the June 1, 2026 NOFO. Under the Administrative Procedure Act, HUD was required to engage in a public notice-and-comment period when it issued the June 1, 2026 NOFO and failed to do so. As a result, the District Court is setting aside the June 1, 2026 NOFO.
- On **August 13, 2026**, Defendants appealed the District Court's decision granting Plaintiffs' motion for summary judgment to the U.S. Court of Appeals for the First Circuit, and Defendants also filed an emergency motion to stay the District Court's decision pending the decision of the First Circuit, which the District Court denied the same day.

Other Cases to Watch

- *United States v. President and Fellows of Harvard College* (District of Massachusetts): On March 20, 2026, the Department of Justice (DOJ) sued Harvard University (Harvard), alleging that Harvard violated Title VI of the Civil Rights Act of 1964 (Title VI), which prohibits discrimination on the basis of race, color, and national origin in any program or activity receiving federal financial assistance, based on Harvard's "intentional conduct and its deliberate indifference to discriminatory harassment of Jewish and Israeli students and creation of a hostile educational environment since October 7, 2023, up to the present day." The DOJ sought, among other relief, a declaratory judgment that Harvard violated Title VI and recovery of the federal funds that Harvard received while allegedly in violation of Title VI. The lawsuit was previously covered in the March 24, 2026 issue of the *Patterson Policy Watch*.
    - On **August 13, 2026**, the District Court granted Harvard's motion to dismiss the amended complaint, finding that the Government had not sufficiently pled an ongoing violation of Title VI. The District Court noted that the amended complaint focused almost entirely on incidents that took place during the 2023-2024 school year and alleged only three incidents thereafter, all of which occurred in March 2025. The District Court found these incidents, "singly and collectively, to be too isolated and episodic to support a plausible inference that any institutionalized noncompliance with Title VI persists at Harvard to this day."

Legislative Watch

- On August 13, H.R. 10090 was introduced in the House of Representatives by Rep. Harriet Hageman (R-WY) and Rep. Sheri Biggs (R-SC) and referred to the House Committee on Ways and Means. The bill would add a new section to the Internal Revenue Code that would impose an excise tax on any private institution of higher education "that permits, for any portion of a taxable year, the participation of an individual whose sex is male in any intercollegiate athletic program or event designed for females." The excise tax would be equal to 10% of the institution's aggregate expenditures on all intercollegiate athletic programs during the applicable taxable year. If enacted, the bill would apply to taxable years beginning after December 31, 2025.

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