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 November 2, 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.

Education

- October 29: The Department of Education (ED) announced that it finalized its rule to revise the regulations governing the Secretary of Education's recognition of accrediting agencies. According to the ED, the Final Rule is "designed to strengthen quality assurance and improve affordability in higher education by prioritizing student outcomes, reducing regulatory burdens, promoting innovation and intellectual diversity, and increasing competition among accrediting agencies." Among other provisions, the Final Rule:
  - eliminates the "two-year rule" for initial recognition of new accrediting agencies and removes geographic restrictions on accreditors' scope;
  - reduces barriers for institutions to change accreditors;
  - shifts the focus of accreditation toward "meaningful student outcomes, including measures of student achievement, completion, and post-completion success";
  - requires institutions that deny transfer credit to provide written reasoning to the student and an appeals process; and
  - directs accreditors to evaluate institutional policies on academic freedom and intellectual diversity.

    The Final Rule was published in the Federal Register on October 30, 2026 and takes effect on July 1, 2027, although accrediting agencies may implement the Final Rule beginning January 1, 2027. The Final Rule implements the April 3, 2025 executive order, entitled "Reforming Accreditation to Strengthen Higher Education," which was covered in the April 29, 2025 issue of the *Patterson Policy Watch*. For additional coverage of the Final Rule, see the May 27, 2026 and August 25, 2026 issues of the *Patterson Policy Watch*.

Health

- October 30: The Department of Health and Human Services (HHS) announced a final rule to clarify that "gender dysphoria not resulting from physical impairments" is not a type of "disability" that is protected from discrimination under Section 504 of the Rehabilitation Act of 1973. Section 504 prohibits programs and activities that receive federal financial assistance from discriminating against individuals based on their disability. The final rule was published in the Federal Register on November 3, 2026 and applies to all programs and activities that receive HHS funding, effective January 4, 2027.

Judicial Watch

As legal challenges to executive actions continue to grow, and as the Department of Justice (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.

Ban on DEI Initiatives in the Executive Branch and by Recipients of Federal Funding

President Trump issued several significant Diversity, Equity, and Inclusion (DEI)-related executive orders (the DEI Executive Orders), including: (1) the January 20, 2025 executive order, entitled "Ending Radical and Wasteful Government DEI Programs and Preferencing," which orders the termination of DEI programs, offices, and positions as well as "equity-related" grants and contracts; (2) the January 21, 2025 executive order, entitled "Ending Illegal Discrimination and Restoring Merit Based Opportunity," which requires federal grant recipients and contractors to certify that they do not operate DEI programs that violate antidiscrimination laws; (3) the January 20, 2025 executive order, entitled "Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government," which prohibits federals funds from being used to promote "gender ideology"; and (4) the March 26, 2026 executive order, entitled "Addressing DEI Discrimination by Federal Contractors," which requires all federal agencies to include certain provisions in contracts, including the requirement that federal contractors and subcontractors agree that they will not engage in any "racially discriminatory DEI activities." Updates in cases we are following in this area include:

- *National Association of Diversity Officers in Higher Education v. Trump* (District of Maryland): On April 20, 2026, Plaintiffs National Association of Diversity Officers in Higher Education, American Association of University Professors, United Academics of Maryland-University of Maryland, National Association of Minority Contractors, and the DMV chapter of the National Association of Minority Contractors sued the Government, challenging the March 26, 2026 executive order, entitled "Addressing DEI Discrimination by Federal Contractors," which prohibits "racially discriminatory DEI activities" by federal contractors. This executive order was covered in the March 31, 2026 issue of the *Patterson Policy Watch*. Plaintiffs allege that the executive order violates the Free Speech and Free Association provisions of the First Amendment and is content-based discrimination. Plaintiffs also argue that the Government is exceeding the scope of its authority. Plaintiffs request that the District Court declare the executive order unconstitutional and enjoin the Government from taking steps to implement the executive order.
  - On June 4, 2026, Plaintiffs filed a motion for a preliminary injunction, requesting that the District Court enjoin Defendants from implementing the executive order and stay the implementation of the executive order's prohibition on "racially discriminatory DEI activities" in active federal contracts.
  - On October 14, 2026, the District Court denied Plaintiffs' motion for a preliminary injunction and stay, finding that Plaintiffs have not shown a likelihood of success on the merits of their constitutional claims against the executive order for the same reasons articulated in the February 6, 2026 decision of the United States Court of Appeals for the Fourth Circuit in *Nat'l Ass'n of Diversity Officers in Higher Educ. v. Trump*. In addition, the District Court found Plaintiffs have not made a showing of irreparable harm sufficient to warrant preliminary relief.

- On **October 28, 2026**, Plaintiffs voluntarily dismissed the case in light of the District Court's conclusion that Defendants' actions are not prohibited by federal law.

Public Service Loan Forgiveness Litigation

On October 30, 2025, the ED promulgated a Final Rule that amends the Public Service Loan Forgiveness (PSLF) Program regulations to redefine a "qualifying employer" whose employees can participate in the PSLF Program to exclude organizations that have a "substantial illegal purpose," such as aiding and abetting violations of federal immigration laws, supporting terrorism or engaging in violence for the purpose of obstructing or influencing federal government policy, engaging in the illegal chemical or surgical castration or mutilation of children, and engaging in a pattern of aiding and abetting illegal discrimination, among others. The Final Rule was issued pursuant to the March 7, 2025 executive order, entitled "Restoring Public Service Loan Forgiveness." A number of nonprofits and state and local jurisdictions have sued the ED seeking to prevent this Final Rule from going into effect. Cases we are following on this issue include:

- *National Council of Nonprofits v. McMahon* (District of Massachusetts): On November 3, 2025, a coalition of cities, nonprofits, and membership associations sued the ED to challenge the Final Rule as violating the Administrative Procedure Act because the ED is exceeding its statutory authority and because the Final Rule is arbitrary and capricious and contrary to the constitutional rights of Free Speech and Due Process.
  - On June 30, 2026, the District Court ruled in favor of Plaintiffs' motions for summary judgment, finding that the Final Rule violates the Administrative Procedure Act and the First Amendment. The District Court then dismissed the case.
  - On August 27, 2026, Defendants appealed the District Court's decision granting summary judgment and order to dismiss the case to the United States Court of Appeals for the First Circuit.
  - On **October 26, 2026**, Defendants voluntarily dismissed their appeal to the First Circuit Court of Appeals.
- *Robert F. Kennedy Center for Justice and Human Rights v. McMahon* (District of Columbia): On November 4, 2025, four nonprofit organizations sued the ED to challenge the Final Rule as violating the Administrative Procedure Act because it is contrary to the Higher Education Act, is in excess of the authority provided under the Higher Education Act, is arbitrary and capricious, and violates the Due Process Clause of the Constitution as well as the First Amendment's protection of Free Speech.
  - On June 30, 2026, the District Court granted Plaintiffs' motion for summary judgment and dismissed the case, finding that the Final Rule violates the Administrative Procedure Act.
  - On August 27, 2026, Defendants appealed the District Court's decision granting summary judgment and order to dismiss the case to the United States Court of Appeals for the District of Columbia.
  - On **October 26, 2026**, the parties jointly dismissed the appeal to the District of Columbia Court of Appeals.

As a result of the dismissal of these cases, the District Court's decision to vacate, or set aside, the Final Rule remains in place, and the Final Rule will not go into effect, meaning that all Section 501(c)(3) organizations remain "qualifying employers" under the PSLF program.

Patterson Belknap is a firm of approximately 200 lawyers based in New York, delivering a full range of services centered around three areas: litigation and disputes, corporate and transactions, and the legal needs of tax-exempt organizations and private clients.

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