

# Potential Impact of Recent Executive Orders to Nonprofit and Legal Aid Organizations

By DAN A. BRODY AND SAT NAM KHALSA

**N**onprofits, including providers of legal aid services, are among the many types of organizations facing actual and potential impacts from executive orders recently issued by the Trump administration, including, but not limited to, orders targeting immigration services and diversity, equity, and inclusion (DEI) policies and practices. When legal aid providers face obstacles and cannot help as many individuals, the need for pro bono services increases.

## Immigration Executive Orders

The “Protecting the American People Against Invasion” Executive Order describes a wide-ranging set of initiatives aimed at advancing the administration’s immigration-related policies. Of note, the order directs the Attorney General and Secretary of Homeland Security to “[i]mmediately review and, if appropriate, audit all contracts, grants, or other agreements providing Federal funding to non-governmental organizations supporting or providing services, either directly or indirectly” to undocumented immigrants. The order further directs those officials to “[p]ause distribution of all further funds pursuant to such agreements pending the results of the review” and to “[t]erminate all such agreements determined to be in violation of law or to be sources of waste, fraud, or abuse....” The order also states that funds previously distributed can be clawed back if deemed to be appropriate given the policy aims of the order.

The “Ending Taxpayer Subsidization of Open Borders” Executive Order directs the head of each Executive Branch department or agency to “ensure, consistent with applicable law, that Federal payments to States and localities do not, by design or effect, facilitate the subsidization or promotion of illegal immigration, or abet so-called ‘sanctuary’ policies that seek to shield illegal aliens from deportation.”

To the extent nonprofits and legal aid providers rely on federal grant funds to serve immigrant populations, their operations face potential impacts from the funding freezes that the orders attempt to impose. Although these orders face legal scrutiny and potential challenges to their implementation, they demonstrate the administration’s intention to target programs that provide services to nondocumented immigrants.

## Diversity, Equity, and Inclusion Executive Order

The “Ending Illegal Discrimination and Restoring Merit-Based Opportunity” Executive Order has significant implications for DEI practices across both private and nonprofit sectors, including legal aid organizations. The order was issued within the broader context of the U.S. Supreme Court’s 2023 decision in *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, which struck down race conscious higher education admissions decisions. This order does not prohibit private organizations from having DEI policies and the order does not create new

anti-discrimination law. Instead, it directs Executive Branch officials to recommend enforcement strategies for ending “illegal” DEI, including litigation and regulatory action, and identifying potential enforcement targets, among other things. Notably, the order has been challenged and, in *National Association of Diversity Officers in Higher Education, et al. v. Trump*, a federal



district court in Maryland issued a preliminary injunction blocking enforcement of certain aspects of the order. At the time of writing, the injunction is on appeal to the Fifth Circuit, complicating the analysis and potential impacts of the order.

Significantly, while the order is directed toward the Executive Branch and its agencies, it represents a call to action for private parties to bring similar legal actions against organizations for “illegal” DEI practices. Lawsuits were filed in the wake of *Students for Fair Admissions, Inc.* and several organizations already have filed a complaint with the Equal Employment Opportunity Commission (EEOC) against the American Bar Association (ABA) over its DEI programs. Nonprofit and legal aid organizations may become the target of litigation initiated by the government or private parties based on DEI practices conducted in the course of their operations and the communities served. To minimize that

potential, nonprofits and legal aid organizations may consider taking some of the following steps: (i) reviewing their public facing materials, communications, and protocols to ensure their mission and policy statements and outgoing communications take into account the potential for increased regulatory scrutiny with respect to DEI policies and initiatives; (ii) reviewing organizational policies and initiatives that incorporate DEI-related principles and goals and evaluate whether any such policies or initiatives could be viewed as noncompliant under existing federal, state, or local anti-discrimination law (with particular emphasis on policies or practices that may appear to prefer or exclude individuals based on demographic characteristics); (iii) developing protocols for responding to governmental inquiries or investigations; and (iv) continuing to monitor guidance from federal, state, and local government as it relates to anti-DEI enforcement.

While the legal and regulatory landscape will continue to evolve, especially in the wake of *National Association of Diversity Officers in Higher Education*, and much remains to be seen, nonprofits and legal aid organizations should be conscious of the potential impact executive orders and related enforcement priorities of the administration have on their policies and activities. And, if the resources of legal aid organizations are cut or tied up responding to executive orders, there may be more unmet legal need and opportunities for volunteerism. ■



**Dan A. Brody** is a Counsel at Robinson & Cole LLP. He is a member of the firm's Litigation Section and focuses his practice on complex business litigation

matters, government and internal investigations, corporate compliance, and criminal defense.



**Sat Nam Khalsa** is a Counsel at R+C where he advises nonprofits and tax-exempt organizations.

