

# Non-Profits Targeted Under New Tax Code Proposals

## Client Alerts

January 16, 2025

By: Dawn L. Smalls, Lauren E. Hackett

House Bill 9495 (H.R. 9495), a bill passed during the 118th Congress, is legislation worth watching for non-profits and other aid organizations. H.R. 9495 passed the House on November 21, 2024, and if passed during the new Congress, Section 4 of the bill would expand the authority of the Treasury Secretary to now include the authority to revoke the tax-exempt status of “terrorist supporting organizations.” The move to revoke the tax-exempt status of “terrorist supporting” organizations would on its face appear uncontroversial. However, many progressive organizations, including the American Civil Liberties Union (ACLU), National Association for the Advancement of Colored People (NAACP), Greenpeace USA, and Planned Parenthood, have decried the provision, arguing that it allows the Executive Branch “to target its political opponents and use the fear of crippling legal fees, the stigma of the designation, and donors fleeing controversy to stifle dissent and chill speech and advocacy.”<sup>[1]</sup>

This client alert explains how an organization would receive such a designation, what limitations exist on the Treasury Secretary’s authority to revoke the tax-exempt status of organizations under this provision, and how an organization might appeal that determination. This article also reviews other moves conservatives may make to modify the tax code to target activities and organizations that are not aligned with the Trump Administration, and it offers best practices for tax-exempt organizations on how to prepare for such scrutiny, regulatory changes, and/or enforcement actions.

## I. An Overview of H.R. 9495

H.R. 9495 seeks to amend the Internal Revenue Code to postpone tax deadlines for hostages and individuals wrongfully detained abroad (Section 2), refund penalties and fines paid by those individuals (Section 3), and give the Treasury Secretary the authority to terminate the tax-exempt status of organizations the Secretary deems to be “terrorist supporting” (Section 4) by amending and adding a new paragraph to Section 501(p) of the Internal Revenue Code, which governs the suspension of tax-exempt status for terrorist organizations. This proposed new paragraph will extend the suspension of tax-exempt status to organizations that are “terrorist supporting,” defined as those that have provided “material support or resources” to designated foreign terrorist organizations “in excess of a de minimis amount” within the previous three years.<sup>[2]</sup> There currently

is no federal executive or statutory authority for designating a domestic organization a “terrorist organization.”

Covered “terrorist organizations” include foreign organizations designated by the State Department pursuant to the Immigration and Nationality Act of 1952, as well as foreign organizations or individuals designated “Specially Designated Global Terrorists” (SDGTs) by the State Department or Treasury Department pursuant to Executive Order 13224 “as engaging in terrorist activity”—such as hijacking vehicles, committing violence upon protected persons, and detaining hostages to leverage action from the government—that “threatens the security of United States nationals or the national security of the United States.”<sup>[3]</sup> What constitutes “material support or resources” to these designated foreign terrorist organizations is defined broadly as “any property, tangible or intangible, or service . . . except medicine or religious materials.”<sup>[4]</sup> This definition includes providing “training” and “expert advice,” such as participating in a lecture series, as well as “personnel” and “transportation,” encompassing non-violent activities which might constitute unintentional support.<sup>[5]</sup>

The Secretary of the Treasury—Scott Bessent, President-elect Trump’s nominee, assuming he is confirmed by the Senate—is responsible for designating these “terrorist supporting” organizations. The bill sets up an evidentiary process for determining whether the organization should be stripped of its 501(c)(3) status which includes an appeals process within the agency:

- If the Secretary identifies a non-profit organization as having materially supported a foreign terrorist organization, he must identify the terrorist groups to whom the Secretary has determined the organization provided material support, and describe the material support provided, to the extent that information is not classified.<sup>[6]</sup>
- From there, the organization will have ninety (90) days as an “opportunity to cure” its “terrorist supporting” designation.<sup>[7]</sup> To do so, the organization must either:
  - (i) “demonstrate[] to the satisfaction of the Secretary” that it did not provide the material support described, or
  - (ii) make “reasonable efforts” to have the material support returned to the organization and certify, in writing, that it will not provide further support to any terrorist organizations.<sup>[8]</sup>
- Failure to satisfy the Secretary or to make reasonable efforts to return the donations at issue and complete the required certification within ninety (90) days of the notice will result in a “terrorist supporting” designation and the suspension of tax-exempt status, effective on the date of designation.<sup>[9]</sup>

- If designated as “terrorist supporting,” the organization is entitled to an administrative review by the IRS Independent Office of Appeals in the same way another organization may contest a decision about its tax-exempt status.
- Then an IRS Appeals officer and the organization will engage in an Appeals Conference (an informal discussion with no sworn testimony or recording), where both parties attempt to reach a settlement agreement. If a settlement is not reached, the organization will receive a letter stating the final decision of the Appeals officer and the deadline for filing a pleading in court, which is usually ninety (90) days from the date of the letter.<sup>[10]</sup> The “terrorist supporting” designation may also be rescinded if the Secretary determines the designation was made in error or if the organization that received the material support is no longer deemed to be a terrorist organization.<sup>[11]</sup>

If no settlement is reached with the Office of Appeals, non-profit organizations may appeal the agency’s determination in federal district court. The bill also allows an organization to bypass the administrative process and file a challenge in federal district court.<sup>[12]</sup>

## **II. Other Tax Policy Reforms Worth Noting**

Beyond H.R. 9495, tax policy will be a top priority for the new conservative majority as they revisit “the biggest set of regulations imposed on philanthropy in generations: The Tax Reform Act of 1969.”<sup>[13]</sup> As background, Vice President-elect Vance has suggested that non-profit foundations and university endowments operate as “social justice hedge funds” funding progressive causes to the tune of billions of dollars while skirting taxes through their non-profit status.<sup>[14]</sup> As a response, Vance has proposed that any charitable organization with an endowment over \$100 million be required to spend 20 percent of its endowment each year, or else lose its 501(c)(3) status and the “preferential treatment” of its income, arguing that this would allow colleges and other secular non-profits to maintain an endowment without accumulating a “war chest of money” to use “as a weapon against conservatives (and even moderates) in the media, the academy and in business.”<sup>[15]</sup> Vice President-elect Vance also introduced three tax bills during his time in Congress, two of which would impose a higher tax on some college and university endowments, increasing them from a 1.4 percent tax on gains to their endowments if they hold more than \$500,000 per student, to 35 percent on private secular schools with at least \$10 billion in endowments.<sup>[16]</sup>

There is also ongoing criticism from both the left and right sides of the aisle of Donor Advised Funds (DAFs), a vehicle that held \$230 billion in assets by the end of 2022,<sup>[17]</sup> and allows immediate tax benefits without any requirement to disburse the money or disclose donors.<sup>[18]</sup> And there have recently been congressional hearings around this suite of topics, for example, the House Ways and Means Committee held a hearing in December 2023, “Growth of the Tax-Exempt Sector and the Impact on the American Political Landscape,” examining the impact of foreign donations to non-

profit organizations, and in February 2024, the House Administration Committee held another hearing examining the role of private funding of election administration.

### **III. Looking Ahead: Non-Profits Should Prepare to Face Additional Scrutiny Under the New Administration**

In a letter sent to congressional leaders in November, a coalition of organizations including the ACLU, NAACP, Greenpeace USA, and Planned Parenthood argued that H.R. 9495 is unnecessary as the executive branch already has “extensive authority” to prohibit transactions with entities that it has designated as foreign terrorist organizations or specially designated global terrorists.<sup>[19]</sup>

If the House does not make further changes to the legislation, and assuming the bill passes in the House in this Congress, then 60 votes in favor of cutting off debate in the Senate would bring the bill to the Senate floor for consideration, where a majority vote would be required to send the bill to the President’s desk to be signed into law.

As we approach the second Trump administration, tax-exempt organizations should anticipate that the President-elect will use both his executive authority via the IRS and the Department of Justice to investigate the agenda and activities of progressive non-profits, and to encourage Congress to continue to pursue investigations into progressive non-profit spending.

Non-profit organizations should pay close attention to the progression of H.R. 9495 as it moves through the House and Senate as well as other bills making their way out of committee that would impact the industry. We also recommend that non-profit organizations likely to face scrutiny put together a response plan that involves strategies for responding to congressional inquiries—whether made via subpoena or invitations to testify before a committee—and have a team that includes internal or outside counsel prepared to respond to any “politicized [or] discriminatory enforcement” of H.R. 9495.<sup>[20]</sup>

### **Footnotes**

[1] Civil Society Letter to House Opposing H.R. 9495 | The ACLU (September 20, 2024).

[2] H.R. 9495 § 4 (adding § 501(p)(8)(B)).

[3] 26 U.S.C. § 501(p)(2); Immigration and Nationality Act, 8 U.S.C. §§ 1182(a)(3)(B), 1189(a)(1).

[4] H.R. 9495 § 4 (adding § 501(p)(8)(B)); 18 U.S.C. § 2339A(b)(1).

[5] Civil Society Letter to House Opposing H.R. 9495 | The ACLU (September 20, 2024).

[6] H.R. 9495 § 4 (adding § 501(p)(8)(C)(i)(I-III)).

[7] H.R. 9495 § 4 (adding § 501(p)(8)(C)(ii)).

[8] H.R. 9495 § 4 (adding § 501(p)(8)(C)(ii)(I,II)). However, if the organization has already provided a written certification to the Secretary within the previous five years, this subsequent certification will not be deemed valid. This leaves the first path—demonstrating the absence of material support—as the only option to cure the designation. Based on the language of the statute, it appears that a prior certification, even for support for a different organization, would deem the subsequent certification invalid.

[9] H.R. 9495 § 4 (adding § 501(p)(8)(A)(ii)).

[10] I.R.S. Publication 892.

[11] H.R. 9495 § 4 (adding § 501(p)(8)(D)(i), (iii)).

[12] H.R. 9495 § 4 (adding § 501(p)(8)(F)).

[13] J.D. Vance and His Many Philanthropy Grievances: What’s at Stake, *The Chronicle of Philanthropy* (July 18, 2024).

[14] Stop Treating Left-Wing Advocacy Groups Like Charities | Opinion - *Newsweek* (October 13, 2021).

[15] It is worth noting that not all conservatives agree with this approach. The Philanthropy Roundtable, a network of conservative donors and grant makers, argues that “imposing broad tax burdens on the non-profit sector could disproportionately harm smaller organizations and diminish their capacity to serve communities effectively” and “punish[] American citizens by taxing their constitutionally protected right to freely associate.” Let’s Not Tax a Constitutional Right | *The Philanthropy Roundtable* (July 16, 2024).

[16] Vance has diverse record on tax, spending | *Roll Call* (July 17, 2024).

[17] US regulators scramble to catch up with boom in donor-advised funds | *The Conversation* (March 1, 2024).

[18] Donor-Advised Fund Philanthropy Under Fire | *Worth* (March 6, 2024).

[19] Civil Society Letter to House Opposing H.R. 9495 | *The ACLU* (September 20, 2024).

[20] *See id.*

## Related Attorneys



**Dawn L. Smalls**

Partner  
dsmalls@jenner.com  
+1 212 891 1639



**Lauren E. Hackett**

Associate  
lmay@jenner.com  
+1 212 407 1776

**Related Capabilities**

Government Controversies and Public Policy Litigation

© 2026 Jenner & Block LLP. Attorney Advertising. Jenner & Block LLP is an Illinois Limited Liability Partnership including professional corporations. This publication, presentation, or event is not intended to provide legal advice but to provide information on legal matters and/or firm news of interest to our clients and colleagues. Readers or attendees should seek specific legal advice before taking any action with respect to matters mentioned in this publication or at this event. The attorney responsible for this communication is Brent E. Kidwell, Jenner & Block LLP, 353 N. Clark Street, Chicago, IL 60654-3456. Prior results do not guarantee a similar outcome. Jenner & Block London LLP, an affiliate of Jenner & Block LLP, is a limited liability partnership established under the laws of the State of Delaware, USA and is authorised and regulated by the Solicitors Regulation Authority with SRA number 615729. Information regarding the data we collect and the rights you have over your data can be found in our Privacy Notice. For further inquiries, please contact [dataprotection@jenner.com](mailto:dataprotection@jenner.com).

**Stay Informed**

