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Is Your EIN Correct?

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Fraternal Law Partners has recently encountered several issues arising from an organization's failure to engage in due diligence in obtaining and policing its Employer Identification Number ("EIN"). The issues we have encountered have caused substantial disruptions to the operations of the impacted organization.

As background, the EIN is the unique number that identifies the organization to the Internal Revenue Service ("IRS"). Below are the few situations we have encountered of which we believe organizations should be made aware.

1. Failure to Properly Apply as an Exempt Organization.

When an organization initially applies to the IRS for its EIN, it provides several pieces of critical information to the IRS, including the type of entity. With the relatively recent adoption of electronic filing as the exclusive means of submitting a series 990 tax return, and the IRS' reliance upon the EIN as the essential identifier of a taxpayer for these purposes, the proper identification of a new organization as being an exempt organization on the application for its EIN, and the specific subsection under which the new organization's exemption is based, is of heightened importance. Failure to make a proper designation of exemption to be associated with the organization's EIN can lead the IRS to classify an organization as a taxable entity and to the rejection of Forms 990.

2. Chapter and House Corporation/Alumni Association Using Same EIN

Another specific situation we have encountered arises in the context of failing to properly police the use of an organization's EIN. We have encountered organizations that improperly share an EIN, resulting in two entities utilizing the same EIN. For example, a chapter and a house corporation/alumni association file a single Form 990 using a shared EIN. Of course, a chapter and house corporation/alumni association are two distinct and separate entities as they have separate governing documents, officers and directors and operations. They should be treated as separate entities for both tax and liability purposes. As such, they should each have their own EIN.

3. Chapter Using Incorrect EIN

Another situation is where chapters filed their annual return with the IRS using the EIN of a different organization. We have encountered this situation in the context of a chapter utilizing the EIN of a national foundation, national fraternity, a university and local house corporations/alumni associations. This not only puts the chapter at risk for automatic revocation of its tax-exempt status for failure to file an annual return under its correct EIN, but it may also cause significant issues for the organization whose EIN was used to file the chapter's return.

For example, national fraternities, fraternal foundations, and other organizations have experienced issues with unauthorized changes to their physical or mailing address, principal officer listing, subordinate status on a group exemption, and inconsistent records related to the organization's gross receipts or net assets due to a chapter's improper use of the incorrect EIN. This has not only caused practical operational issues, but it has also caused issues regarding foundation and university donor relations.

Ensuring that chapters have access to and use their unique EIN when filing an annual return is critical to ensure the chapter retains its exempt status and to protect the national organization or other affiliate from unauthorized changes to its IRS records.

4. Entity with Multiple EINs

As noted above, the EIN is the unique number that permanently identifies the organization to the Internal Revenue Service.[1] It is similar in that regard to an individual's Social Security Number. As such, an entity should only have one EIN and once the IRS assigns an EIN to an entity, it becomes that entity's permanent federal taxpayer ID number.[2] If an entity is unsure of the EIN that was assigned to them, an officer duly authorized to act on behalf of the organization or an authorized representative, such as legal counsel, can call the IRS and request information regarding a lost or misplaced EIN.[3] An entity generally should not obtain a new EIN until it does its due diligence to determine that the IRS does not have any record of an EIN on file.

It is important that organizations utilize their own EIN to ensure proper identification and compliance. The issues above can be avoided by an organization engaging in due diligence in obtaining and policing its EIN. If an organization discovers that it has improperly utilized the EIN of another entity, or an entity has incorrectly utilized its EIN, it is essential for the organization to promptly correct the error in order to avoid any adverse effects to the organization.

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[1] *Employer Identification Number*, IRS, https://www.irs.gov/charities-non-profits/employer-identification-number#:~:text=Every%20organization%20must%20have%20an,PDF%20and%20its%20instructions%20PDF (last visited June 25, 2025).
[2] *If You No Longer Need Your EIN*, IRS, https://www.irs.gov/businesses/small-businesses-self-employed/if-you-no-longer-need-your-ein (last visited June 25, 2025).
[3] *Employer Identification Number*, IRS, https://www.irs.gov/businesses/employer-identification-number#multiple (last visited June 25, 2025).

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New Federal Bill Would Expand Freedom for Greek Organizations

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On April 1, 2025, Representative Erin Houchin (R-Ind.) and Senator Jim Banks (R-Ind.) introduced the *Freedom of Association in Higher Education Act*, which, if enacted, would significantly expand federal protections for students participating in single-sex organizations such as fraternities and sororities.[4] The bill, formally designated H.R. 2555 in the House and S.1225 in the Senate, proposes amendments to the Higher Education Act of 1965 to prohibit colleges and universities receiving federal funding from penalizing students solely for their membership in gender-exclusive groups.[5]

The legislation emerges in response to high-profile disputes over university policies that restrict or discourage membership in such organizations.[6] Most notably, in 2016, Harvard University instituted a policy barring members of unrecognized single-sex organizations from holding leadership roles in student groups or receiving institutional endorsements for prestigious fellowships.[7] Though the policy was later rescinded, it sparked national (and legal) debate over

[4] *See* Freedom of Association in Higher Education Act, H.R. 2555, 119th Cong. (2025).
[5] *See id.* § 2(a) (proposing amendments to 20 U.S.C. § 1011).
[6] *See, e.g.,* Valerie Strauss, *Harvard Rescinds Policy Against Fraternities, Sororities, and Other Single-gender Organizations*, WASH. POST (June 30, 2020).
[7] *Id.*

whether institutional regulation of social group membership violates students' associational rights under the First Amendment.[8]

The Freedom of Association in Higher Education Act seeks to codify those rights at the federal level. Specifically, the bill prohibits "adverse action" against students for affiliating with a single-sex organization, including loss of institutional recognition, exclusion from leadership eligibility, or any form of administrative discipline.[9] The bill does not require universities to formally recognize such organizations or provide them with funding or resources.[10] Rather, it establishes a clear line: as long as a student organization complies with applicable laws, students' participation in that group cannot be grounds for punitive action by the institution. It also prohibits institutions from imposing recruitment restrictions on recognized single-sex membership organizations unless the same is applied to other student organizations, or if the organization enters a written agreement to adhere to recruitment restrictions.[11]

In doing so, the bill explicitly reinforces students' rights to expressive association, as recognized in cases such as *Boy Scouts of America v. Dale*[12] and *Healy v. James*.[13] These decisions affirm the constitutional right of individuals to form groups based on shared beliefs, values, or identities, even when those associations involve exclusion. Notably, while courts have generally held that *public* universities are bound by First Amendment protections, the proposed Act would extend similar safeguards to all institutions receiving federal funds, whether public or private.

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[8] *See, e.g.,* Letter from Foundation for Individual Rights in Education (FIRE) to Harvard University (May 12, 2016), https://www.thefire.org/research-learn/fire-letter-harvard-university.
[9] H.R. 2555 § 2(b).
[10] *Id*. § 2(c).
[11] *Id*. § 2(b)(3).
[12] 530 U.S. 640 (2000).
[13] 408 U.S. 169 (1972).

Importantly, the bill preserves institutional authority in certain respects. Schools retain the power to discipline students for conduct violations unrelated to group affiliation and are not required to recognize any particular organization.[14] The bill also allows gender-exclusive groups to maintain their status without being compelled to accept members of the opposite sex, preserving longstanding traditions among Greek-letter organizations.[15]

This is not the first time that *The Freedom of Association in Higher Education Act* has been proposed to Congress. In 2023, Representative Elise Stefanik (R-N.Y.) sponsored the Act, which ultimately died in the House Committee on Education and Workforce without undergoing a single reading.[16] Unlike its previous iteration, the current version of the legislation has a Senate companion, which has already been read twice and referred to the Senate Committee on Health, Education, Labor, and Pensions.

If enacted, the *Freedom of Association in Higher Education Act* would likely prompt significant policy changes for institutions that have adopted restrictive recognition or leadership eligibility policies. It would also provide fraternities, sororities, and similar organizations with a powerful statutory foundation for asserting their right to exist and operate without administrative interference, a development that may reshape the relationship between higher education and student expression for years to come.

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[14] H.R. 2555 § 2(d).
[15] *Id*. § 2(e).
[16] Press Release, Rep. Elise Stefanik, *Stefanik Introduces Legislation to Protect Single-Sex Organizations in Higher Education* (Apr. 17, 2023), https://stefanik.house.gov/2023/4/stefanik-introduces-legislation-to-protect-single-sex-organizations-in-higher-education.

OCR Launches Title IX Investigation into University of Wyoming over Sorority Membership Dispute

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On June 2, 2025, the U.S. Department of Education's Office of Civil Rights (OCR) announced it was investigating the University of Wyoming for potential violations of Title IX, the federal law the prohibits sex-based discrimination in education. This announcement came as part of the U.S. Department of Education's launch of its "Title IX Month."[17]

The investigation stems from litigation previously covered by *Fraternal Law* regarding the Kappa Kappa Gamma Sorority Chapter at the University of Wyoming's decision to admit a transgender woman into the sorority. While the still ongoing litigation is against the sorority itself, the investigation focuses on the University and its role in recognizing or otherwise supporting the local Chapter. The announcement states:

> OCR launched an investigation into the University of Wyoming after the university allowed a man to join a campus sorority, Kappa Kappa Gamma (KKG). Members of the KKG sorority chapter sued the sorority itself for allowing a male into the group and permitting him to access living areas of the sorority house that are restricted to women. A school receiving federal funding that supports, sponsors, or promotes a sorority or fraternity, must meet its obligations under Title IX to protect its students from sex-based harassment and sexual assault, regardless of the sorority or fraternity's policy. A sorority that admits male students is no longer a sorority by definition and thus loses the Title IX statutory exemption for a sorority's single-sex membership practices.[18]

There are a couple of items to unpack within this announcement. First comes the obvious departure from the Obama and Biden administrations' position that same-sex social organizations may admit transgender members without jeopardizing their single-sex status.

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[17] *U.S. Department of Education Recognizes June as 'Title IX Mont*h,' U.S. DEP'T OF EDUC., (June 2, 2025), https://www.ed.gov/about/news/press-release/us-department-of-education-recognizes-june-title-ix-month.
[18] *Id.*

Next—and most perplexing—is the final sentence focused on the statutory exemption. Title IX expressly exempts social fraternities and sororities from the prohibition on sex-based admissions policies, allowing them to remain single-sex. However, the exemption applies to institutions of higher education with respect to their recognition of such organizations; it does not apply to the individual fraternal organization itself. So, if OCR's position is that the sorority admitted a male, it is unclear how OCR would prove that this then caused the University of Wyoming to violate Title IX. The University of Wyoming (and just about every other major college and university in the country) has countless student organizations they routinely recognize that admit both men and women.

While it feels difficult to imagine that the OCR would prevail in a legal argument of this nature, the most interesting element of this announcement lies with how the University (and others like it) will respond. Some schools may take a proactive stance, conditioning continued recognition of fraternities and sororities on strict adherence to biological definitions of sex. Others may resist, potentially litigating the issue to seek definitive judicial clarification. Until then, this will continue to be a legal question in flux.

Summer State Registration Compliance Updates

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In recent years, state charitable registration offices have transitioned their registration processes to digital platforms. And, with new technology comes new challenges. Recently, two states, Mississippi and New Jersey, have introduced updates to their charitable registration portals that filers should be aware of.

Many organizations that register with Secretaries of State and Attorneys General for charitable solicitation purposes are familiar with the state-specific signature portal process in Colorado, Massachusetts, Mississippi, New York, and Tennessee. Filers may now add **New Jersey** to the list of states seeking digital signatures.

After several weeks of maintenance, the New Jersey Department of Consumer Affairs rolled out a series of updates to its online portal in late May 2025. While New Jersey's statute and registration requirements are unchanged, the updates change the user experience for organizations and third-party filers. Most notably, *the report must now be signed via the state portal, rather than by uploading a separately executed authorization page*. Two authorized officers, one being the Chief Financial Officer or equivalent, will now receive an email via DocuSign from the NJ Department of Consumer Affairs to review and sign the report prepared by a third-party or other filer. The report may not be submitted until both authorized signors have executed the DocuSign. Signors may receive an invitation through the website to create an account to manage his or her own access to the organization's record, but no login or password is required simply to sign a report.

Separately, in **Mississippi**, the state has begun to reject renewal registrations that do not include an email address for each officer of the organization. Historically, the state has requested

street and email addresses for two officers listed in the application, but now requires that *a list of all officers' email addresses be uploaded with the application*. This list is provided to the state but is not made publicly available on the Mississippi Secretary of State's website when searching for an organization.

While neither of these changes are drastic, we understand that small changes in all states over the last several years have increased the time and attention officers and foundation staff must spend on compliance-related matters. At Manley Burke Compliance, LLC, we have made strides to streamline and digitize our own processes to efficiently prepare and file reports with each state's unique signature process, timeline, and nuanced financial and organization information. We are thankful to our existing nationwide state charitable registration partners, and are happy to connect with fraternal foundations to address charitable, corporate, and tax filing needs.

The goal of *Fraternal Law* is to provide a discussion of fraternity law, but its contents are not intended to provide legal advice for individual problems of Greek organizations. The latter should be obtained from your attorney.

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