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GFOA: Executive Order on Sanctuary Cities Raises Questions and Concerns among Local Governments

On January 25, 2017, President Trump issued the executive order, [Enhancing Public Safety in the Interior of the United States](#). An executive order is an official statement from the president that directs federal agencies as to how they are to expend their resources within the laws that are established by Congress and the Constitution. Technically, while an executive order is considered binding, it is subject to legal review and cannot be used to create new law or appropriate new funding from the U.S. Treasury. And while the use of executive orders is common, this particular executive order has drawn concern from finance officers in various jurisdictions because of a potential loss of federal grant funding for failure to comply with the order. Legal arguments against the executive order have been identified and are in development. As a member of the State and Local Legal Center, GFOA will continue to monitor the implementation of this executive order and will update GFOA members as developments occur.

Almost immediately after its publication, the executive order raised questions and caused confusion as jurisdictions debated on how broadly to interpret its language. Aside from the political debate the order generates on federal immigration policy, most of the remaining concern is because the order threatens to withhold federal funding from so-called “sanctuary cities.” Although there is no specific legal definition for a sanctuary city, in general, the term refers to cities, counties, and states that chose not to cooperate with federal efforts to deport undocumented immigrants.

The issues primarily revolve around the extent and scope of the executive order, particularly as it relates to the restriction of federal funding. Sec. 2(c) broadly states that jurisdictions that fail to comply with federal law will not receive federal funds, and Sec. 9(a) seems to narrow the focus of the order to denying federal grant funding to the sanctuary jurisdictions. Even if the restriction just applies to federal grant funding, the language still raises the question of whether the order is imposing new conditions on grants that have already been appropriated or on future grants. In either scenario, some legal scholars are noting this could raise constitutional issues because “new” conditions on federal grant funding fall under the authority of Congress and not the president.

There will likely be a number of legal challenges in the coming weeks and months, as some local government leaders have already declared their intention to fight the order. Some of the current discussion on challenging the executive order has identified previous U.S. Supreme Court decisions as possible defenses. For example, in *South Dakota v. Dole* (1987), the Supreme Court upheld prior case law that restrictions on federal grants would not be valid “if they are unrelated to the federal interest in particular national projects or programs” and must also be to promote “general welfare.” And two decisions that will likely receive significant attention are *Nat’l Fed’n of Indep. Bus. v. Sebelius* (2012) and *Printz v. US* (1997). In both cases, the Supreme Court focused on the federal government compelling states to take certain action or administer a federal regulatory program, and the court ruled against the federal government because the actions violated the Tenth Amendment and undermined the principles of federalism.

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