

**Insights**

## **NEW DEI EXECUTIVE ORDER TARGETS RACIAL DISCRIMINATION BY FEDERAL CONTRACTORS**

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Nearly fourteen months after taking office, President Donald Trump signaled his administration's continued interest in and scrutiny of diversity, equity, and inclusion ("DEI") programs by signing the ["Addressing DEI Discrimination by Federal Contractors" Executive Order](#) (the "New DEI EO") on March 26, 2026.

At a high level, the New DEI EO requires:

- Federal agencies to: (i) include (and ensure its contractors and subcontractors include) a new compliance clause in government contracts and subcontracts regarding racially discriminatory DEI activities (the "Compliance Clause") within 30 days; (ii) cancel, terminate, or suspend any contract that fails to comply with the compliance clause; (iii) suspend or debar contractors that fail to comply with the New DEI EO; and (iv) report their New DEI EO compliance to the Assistant to the President for Domestic Policy (the "President's Assistant") within 120 days and regularly thereafter.
- The Office of Management and Budget (the "OMB"), U.S. Attorney General ("AG"), the President's Assistant, and the Chair of the Equal Employment Opportunity Commission ("EEOC") to identify "economic sectors" that pose a risk of engaging in racially discriminatory DEI activities.
- The AG to: (i) consider bringing False Claims Act ("FCA") actions against contractors who violate the Compliance Clause and (ii) review whistleblower FCA actions brought against contractors;
- The Federal Acquisition Regulatory Council ("FAR Council") to: (i) amend the Federal Acquisition Regulation ("FAR") to align with the New DEI EO and (ii) issue relevant deviation and interim guidance within 60 days.

The New DEI EO is distinguishable from President Trump's other DEI-related executive orders, including Executive Orders [14173](#) and [14281](#), in several ways.

First, the New DEI EO is limited in scope to “racially discriminatory DEI activities.” Prior DEI-related executive orders often referred to race and sex discrimination, but were not explicitly limited to these forms of discrimination.

Second, the New DEI EO provides a specific definition for the DEI activities that it alleges to be illegal. “Racially discriminatory DEI activities” is defined as “disparate treatment based on race or ethnicity in recruiting, employment (e.g., hiring, promotions), contracting (e.g., vendor agreements), program participation, or allocation of deployment of an entity’s resources.” The New DEI EO further defines “program participation” to mean “membership or participation in, or access or admission to: training, mentoring, or leadership development programs; educational opportunities; clubs; associations; or similar opportunities that are sponsored or established by” contractors. Importantly, racially-based disparate treatment discrimination has long been illegal under several federal laws, including Title VII of the Civil Rights Act of 1986 and Section 1981 of the Civil Rights Act.

Third, the New DEI EO identifies the specific language that must be included in the Compliance Clause.

Fourth, the Compliance Clause requires federal contractors to do more than simply certify that they have not engaged in any racially discriminatory DEI activities (a certification which, like Executive Order 14173, is deemed to be a hook for FCA actions). The New DEI EO also requires federal contractors to:

- Furnish “all information and reports, including providing access to books, records, and accounts,” that the contracting federal agency determines is required to ascertain the contractors’ compliance.
- Report any of their subcontractors’ “known or reasonably knowable conduct that may violate” the Compliance Clause to the contracting agency and take appropriate remedial action as directed by the contracting agency.
- Notify the contracting agency if a subcontractor sues the contractor and puts the validity of the Compliance Clause at issue in any way.

The New DEI EO is also distinguishable from historical federal contractor executive orders, including the now-revoked Executive Order 11246, which established certain equal employment opportunity obligations, such as affirmative action obligations with respect to race and sex, for federal contractors. Rather than centralizing enforcement under the Office of Federal Contract Compliance Programs (“OFCCP”), the New DEI EO requires each individual contracting agency to enforce the Compliance Clause and other requirements outlined in the executive order. This decentralization could result in different – and even conflicting – interpretations and enforcement of the New DEI EO.

It remains to be seen how these agencies, the OMB, the AG, the President's Assistant, the EEOC Chair, and the FAR Council will implement their respective obligations under the New DEI EO, but for now, federal contractors and subcontractors should consider doing the following:

- Be on the lookout for communications from federal contracting agencies and higher tier contractors regarding potential updates to current federal contracts.
- Be prepared to incorporate required clauses in subcontracts and purchase orders.
- Monitor guidance from contracting agencies and the FAR Council regarding compliance with the New DEI EO.
- Continue to evaluate all current and historical DEI-related programs, policies, activities, and communications, including employee resource groups, supplier diversity programs, mentoring programs, leadership programs, professional development programs, and external and internal reports, as these policies, programs, and groups may be alleged to further disparate treatment based on race (or any other protected characteristics).
- Have policies and systems in place to immediately address any questions or concerns raised internally regarding their DEI programs and policies.
- Provide training and internal guidance to leaders regarding DEI-related discrimination.

BCLP has a team of knowledgeable employment lawyers and other professionals who are monitoring developments in this area and can help employers evaluate their DEI programs, government contracts, and more. If you or your organization would like more information on this or any other employment issue, please contact any attorney in our Employment and Labor Practice Group.

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