

LEGAL ALERT

FEBRUARY 10, 2025



EXECUTIVE ORDER 14173: WHAT IT MEANS FOR FEDERAL CONTRACTORS AND SUBCONTRACTORS

BY MATTHEW K. GRASHOFF, SONJA C. RICE AND
MATTHEW F. WAGNER

HAHN LOESER & PARKS LLP

Recent actions by the federal government have called into question the use of measures intended to foster diversity, equity, and inclusion (“DEI”) on federal construction projects or projects receiving federal funding. On January 21, 2025, President Trump signed [Executive Order 14173](#) (the “Order”) revoking Executive Order 11246 signed by President Johnson in 1965. The revoked Executive Order 11246 mandated equal employment opportunities for federal employees and federal contractors. On January 24, 2025, the Acting United States Secretary of Labor, Vincent Micone, issued [Order 03-2025](#) directing the Office of Federal Contract Compliance Programs (“OFCCP”) to “immediately cease and desist all investigative and enforcement activity under the rescinded Executive Order 11246... and regulations promulgated under it.”

WHAT DOES PRESIDENT TRUMP’S EXECUTIVE ORDER SAY?

Section 1 of the Order provides a brief explanation for the basis for the Order. After reaffirming the United States’ commitment to protect the civil rights of individual Americans from discrimination based on race, color, religion, sex, or national origin, it then proceeds to characterize DEI and Diversity, Equity, Inclusion, and Accessibility (“DEIA”) policies as “dangerous, demeaning, and immoral race- and sex-based preferences” while further asserting that such policies “violate the text and spirit of our longstanding Federal civil-rights laws” while undermining “national unity, as they deny, discredit, and undermine the traditional American values of hard work, excellence, and individual achievement.”

Section 3(b)(ii) of the Order directs the OFCCP to immediately cease “[p]romoting ‘diversity,’” “[h]olding Federal contractors and subcontractors responsible for taking ‘affirmative action,’” and “[a]llowing or encouraging Federal contractors and subcontractors to engage in workforce balancing based on race, color, sex, sexual preference, religion, or national origin.”

Section 3(b)(iv) of the Order further directs the heads of each government agency to include language in every contract or grant award by which the party signing the contract or receiving the grant attests that they are in compliance with all federal anti-discrimination laws and to affirm that they do not operate any “programs promoting DEI that violate any applicable Federal anti-discrimination laws.”

The Order specifically notes that it does not apply to employment or contracting preferences for veterans or to persons protected by the Randolph-Sheppard Act, which provides persons with blindness with remunerative employment and self-support through the operation of vending facilities on federal and other property.

HOW DOES THE ORDER AFFECT FEDERALLY-FUNDED PROJECTS?

The short answer is that it is not yet clear how the Order affects projects that are funded in whole or in part by federal funds. This lack of clarity stems in part from ambiguities in the Order itself:

- The Order requires the OFCCP to immediately cease promoting “diversity.” But the Order puts the term “diversity” in quotation marks, suggesting that the term is undefined but may remain subject to interpretation by the OFCCP.
- The Order repeatedly uses the phrase “Federal contractors and subcontractors,” but those terms are not defined. Do they mean only contractors and subcontractors working on federal projects? Do they include contractors and subcontractors working on state- or local-level projects that are funded only in part by federal funding or grants?
- The Order requires grant language to include provisions mandating that grant recipients attest that they do not operate programs “promoting DEI that violate any applicable Federal anti-discrimination laws.” It is unclear which, if any, federal anti-discrimination laws are implicated by the use of DEI or disadvantaged business enterprise (“DBE”) requirements.
- The Order requires all executive departments and agencies to terminate all “discriminatory and illegal preferences, mandates, policies, programs, activities, guidance, regulations, enforcement actions, consent orders, and requirements.” But, due in part to the changing legal landscape regarding affirmative action, it is unclear what constitutes “illegal” DEI efforts. For instance, if a municipality, or state Department of Transportation, or local transit authority utilizes DBE goals or requirements in awarding contracts, will it now be prohibited from doing so if their projects receive any federal funding?
- In the short term, the Order permits federal contractors to continue operating under the prior regulatory scheme for 90 days from the date of the Order. Following those 90 days, however, it is unclear what the new rules will be for entities that bid on federal or federally funded contracts. If a public entity’s request for proposals (RFP) was issued before the Executive Order was issued, but the awarded contract is entered into after the 90-day period, will the contract be subject to the new rules? If an RFP is issued during the 90-day period, but the awarded contract is not executed until after the 90-day period, will the contract be subject to the new rules?

Until further guidelines and clarity are provided by OFCCP, these questions remain unanswered.

GOING FORWARD:

The Order contains several ambiguities that will hopefully be resolved by further guidance from appropriate authorities or interpretation by the courts.

It is also possible that the Order will be affected by legal action. On February 3, 2025, a group of plaintiffs including the National Association of Diversity Officers in Higher Education, the American Association of University Professors, the Restaurant Opportunities Centers United, and the Mayor and City Council of Baltimore, Maryland [filed an action](#) in the United States District Court of Maryland arguing that the Order illegally encroaches on the powers of Congress and impermissibly engages in viewpoint discrimination in violation of the First Amendment. Other lawsuits are likely. Hahn Loeser & Parks will continue to monitor this issue and provide further relevant updates as they become available.

AUTHORS



MATTHEW K. GRASHOFF, PARTNER
mgrashoff@hahnlaw.com
216.274.2205



SONJA C. RICE, PARTNER
scrice@hahnlaw.com
216.274.2211



MATTHEW F. WAGNER, ASSOCIATE
mfwager@hahnlaw.com
216.274.2345

This legal alert was created for general informational purposes only and does not constitute legal advice or a solicitation to provide legal services. This information is current as of the date of the alert. The information in this legal alert is not intended to create, and receipt of it does not constitute, a lawyer-client relationship or reinstate a concluded lawyer-client relationship. Readers should not act upon this information without consulting legal counsel admitted in the state at issue.

Executive Order 14173 is subject to litigation and it is expected that the Office of Federal Contract Compliance Programs will likely introduce guidance interpreting the Order, it is subject to change.