

LEGAL ALERT

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FOURTH CIRCUIT COURT OF APPEALS ALLOWS FOR ENFORCEMENT OF DEI-RELATED EXECUTIVE ORDERS PENDING APPEAL

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On March 14, 2025, The U.S. Court of Appeals for the Fourth Circuit granted the government’s request to stay a [nationwide preliminary injunction](#) that blocked enforcement of elements of President Trump’s [Executive Order 14173](#) (signed January 21, 2025) ending DEI programs within federal grant and contract processes, and his similar Executive Order 14151 (signed January 20, 2025) ending the federal government’s DEI initiatives, programs, and equity-related grants or contracts (collectively, the “Executive Orders”).

The February 21, 2025 nationwide preliminary injunction, entered by Judge Abelson of the U.S. District Court for the District of Maryland, blocked enforcement of multiple provisions of the Executive Orders relating to DEI programs. The three-judge panel of the Fourth Circuit unanimously granted the government’s request to stay the preliminary injunction. The panel found that the government had demonstrated a likelihood of success on the merits of its appeal, thus satisfying the requirements for a stay of the injunction. The effect of the stay is that the government will be able to enforce the Executive Orders without restriction while the appeal of the preliminary injunction is pending.

Specifically, federal agencies may now do the following:

- Require federal contractors and grantees to certify that they do not operate any programs “promoting DEI that violate any applicable Federal anti-discrimination laws” and that they are in compliance with applicable Federal anti-discrimination laws. Federal contractors and grantees also must acknowledge that compliance is “material to the government’s payment decisions,” thus triggering potential liability under the False Claims Act for violating the certification requirement. Note, however, that [EO 14173](#) allowed federal contractors to continue operating under the prior regulatory scheme for 90 days from the date of the Order (i.e., until April 21, 2025). At this point, it is unclear what the new rules will be for entities that bid on federal or federally funded contracts.

- Develop a strategic enforcement plan, with the Attorney General’s assistance, to end illegal discrimination and preferences, including DEI, in the private sector. Agency strategic enforcement plans may lead to investigations of and enforcement actions against private sector organizations.
- Terminate all “equity related” grants or contracts within 60 days as directed in EO 14151.

WHAT IS NEXT?

Federal contractors should expect updates from the Office of Federal Contract Compliance Programs (OFCCP) regarding compliance with EO 14173 as the 90-day deadline approaches. The Fourth Circuit has ordered an expedited briefing schedule for the full appeal of the preliminary injunction, with the government’s opening brief due on April 8, 2025, and the Plaintiffs’ response brief due on May 8, 2025. The appeals process will likely take several months, and the Court is unlikely to issue an opinion before early summer 2025. In the meantime, federal contractors and grantees should be prepared to comply with direction from the OFCCP as it comes out. Hahn Loeser & Parks will continue to monitor this issue and provide updates as they become available.

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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.