

# 6000+ Federal Contractor Compliance “Audits” are Coming

## What We Know from FAR Clause 52.222-90

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# Our Presenters



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# DCI: Data Driven – Client Focused

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## Our Mission

Advancing non-discrimination and fairness in the workplace by implementing merit-based and skill-focused employment practices.

## Our Vision

We believe every person deserves equal opportunity and fair treatment in the workplace and beyond.

# How DCI Can Help



## Compliance

- VEVRAA and Section 503 AAPs
- Mandatory job listings
- State affirmative action and non-discrimination
- EEO-1 and VETS-4212 reports
- DOL compliance review support
- State pay reporting
- Pay transparency
- Proactive guidance on regulatory change



## Selection and Assessment

- Job analysis
- Selection procedure development and validation
- Expert evaluation/bias audit of HR systems, including artificial intelligence



## Workforce Analytics

- DEI risk mitigation
- EEO disparity analyses
- Damage calculations
- Non-discrimination in employment plans
- Reduction-in-force analyses
- Barrier analyses



## Pay Equity and Compensation

- Pay equity studies
- EU Pay Transparency
- Pay compression studies
- Wage gap studies
- Job architecture development
- Market benchmarking
- Pay band creation
- Executive compensation reviews
- Bonus program reviews



## Litigation Support

- Consulting expert in applied research in class action litigation
- Testifying expert in case strategy, expert reports, & sworn testimony
- Expert reviews of AI-based hiring procedures

# Webinar Format

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# New Contract Clause: What it Requires

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FAR 52.222-90

# Background

## Executive Order 14398

- **Signed:** March 26, 2026
- **Published:** Federal Register (91 FR 16147), March 31, 2026
- **Title:** Addressing DEI Discrimination by Federal Contractors
- **Core Mandate:** Federal agencies should not do business with contractors that engage in any racially discriminatory DEI activities.
- **FAR Council Direction:** Section 5 of EO 14398 directs the FAR Council to issue a deviation for agency implementation of the contract clause in Section 3 of the EO.

**Date Signed:**  
March 26, 2026

**Published in Federal Register:**  
March 31, 2026

**Effective Date (New Contracts):**  
April 24, 2026

**Existing Contracts Deadline:**  
July 24, 2026

# FAR Clause 52.222-90: What it Requires

## Key Definition — "Racially Discriminatory DEI Activities"

*Disparate treatment based on race or ethnicity in: recruitment, employment (hiring, promotions), contracting (vendor agreements), program participation, or allocation/deployment of an entity's resources.*

(b)(1)

### No racially discriminatory DEI activities

Contractor agrees not to engage in any racially discriminatory DEI activities during contract performance.

(b)(2)

### Furnish records & access

Must provide all information and reports — including access to books, records, and accounts — as required by the Contracting Officer.

(b)(3)

### Noncompliance consequences

Contract may be canceled, terminated, or suspended; contractor may be declared ineligible for further government contracts.

(b)(4)

### Report subcontractor violations

Must report any subcontractor's known or reasonably knowable conduct that may violate the clause and take remedial action.

(b)(5)

### Notify of subcontractor lawsuits

Must inform the Contracting Officer if a subcontractor sues and the suit puts at issue the validity of the clause.

(b)(6)

### False Claims Act materiality

Compliance is material to the Government's payment decisions under 31 U.S.C. 3729(b)(4) — i.e., the False Claims Act.

# Clause, Word for Word

[52.222-90 Addressing DEI Discrimination by Federal Contractors

As prescribed in 22.2203, insert the following clause:

ADDRESSING DEI DISCRIMINATION BY FEDERAL CONTRACTORS (DEVIATION DATE)

(a) *Definitions.* As used in this clause—

*Program participation* means 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 the contractor or subcontractor.

*Racially discriminatory diversity, equity, and inclusion (DEI) activities* means disparate treatment based on race or ethnicity in the recruitment, employment (e.g., hiring, promotions),

contracting (e.g., vendor agreements), program participation, or allocation or deployment of an entity's resources.

(b) In connection with the performance of work under this contract, the Contractor agrees as follows:

(1) The Contractor will not engage in any racially discriminatory DEI activities.

(2) The Contractor will furnish all information and reports, including providing access to books, records, and accounts, as required by the Contracting Officer, for purposes of ascertaining compliance with this clause.

(3) In the event of the Contractor's or a subcontractor's noncompliance with this clause, this contract may be canceled, terminated, or suspended in whole or in part, and the Contractor or subcontractor may be declared ineligible for further Government contracts.

(4) The Contractor will report any subcontractor's known or reasonably knowable conduct that may violate this clause to the Contracting Officer and take any appropriate remedial actions directed by the Contracting Officer.

(5) The Contractor will inform the Contracting Officer if a subcontractor sues the Contractor and the suit puts at issue, in any way, the validity of this clause.

(6) The Contractor recognizes that compliance with the requirements of this clause are material to the Government's payment decisions for purposes of 31 U.S.C. 3729(b)(4).

(c) The Contractor must include the substance of this clause, including this paragraph (c), in subcontracts at any tier, including those for commercial products and commercial services, for which the place of delivery or performance is in the United States.

# Coverage, Thresholds & Flow-Down Requirements

**\$15,000**

**Micro-Purchase Threshold  
(Coverage Trigger)**

## Who Is Covered?

- ✓ Prime contractors — all contracts over \$15K
- ✓ Subcontractors at any tier — all over \$15K
- ✓ “Including” Commercial products and commercial services
- ✓ Place of delivery or performance in the United States
- ✓ Indefinite-delivery contracts and existing definitive contracts
- ✗ Contracts expiring by December 31, 2026 — modification at CO discretion

## ⚠ MANDATORY FLOW-DOWN CLAUSE — Subcontracts at Any Tier

*Per FAR 52.222-90(c): "The Contractor must include the substance of this clause, including this paragraph (c), in subcontracts at any tier, including those for commercial products and commercial services, for which the place of delivery or performance is in the United States."*

Prime contractors are responsible for ensuring all subcontractors — regardless of tier — are bound by the same prohibitions. **Failure to flow down exposes the prime contractor to noncompliance liability.**

# What Does it Say About Audits/Investigations?

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What to Expect

# Enforcement Landscape Based on What We Know



## Estimated Audit Burden (Per the PRA Supporting Statement)



*\*Note: the term 'audit' is not used in the FAR guidance, but the term "investigation" is.*

# Who is Conducting Audits/Investigations?



For the near term, it looks like each contracting agency and contracting officer.



This is distributed de-centrally across approximately 400 federal entities.



Once the Office of Management and Budget (OMB) approves the information collection under the Paperwork Reduction Act (PRA), federal agencies will be expected to enforce **FULL COMPLIANCE** with the requirements.



Key point: information is intended to be submitted electronically; we will know more once the formal ICR is released.

# Open Questions

## Enforcement Structure

- Will each contracting officer at 400+ agencies conduct independent audits, or will enforcement ultimately be centralized?

## “Lookback” Period

- How far back will audits go?

## Subcontractor Coverage

- Must subcontractors be necessary to contract performance?

## Audit Scope

- Whole company? Contract specific?

## ICR / Data Requirements

- What specific information and data will be collected?

## Contracting Officer Competency

- Will contracting officers be trained to assess disparate treatment?

# Emergency Approval

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## Immediate Enforcement Pathways

# FAR Council Guidance on Information Collection

*Source: FAR Council Guidance Memorandum, April 17, 2026 — Paperwork Reduction Act Section*

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Once OMB approves the information collection under the PRA, agencies will be expected to enforce **full compliance** with these requirements.

Until that time, however, agencies may still enforce the requirement for contractors to submit **existing records** regarding compliance with the requirements of the clause in connection with **individual investigations**. Such records include those requested by the **Equal Employment Opportunity Commission** or the **Department of Justice** as part of an investigation of an alleged violation of the clause.

In addition, agencies should expect that contractors will alert the appropriate contracting officer of **potential violations of the clause or lawsuits relating to the clause**.

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**NOW: EEOC & DOJ records requests are already enforceable**

**FUTURE: Full enforcement begins upon permanent OMB ICR approval**

# What Information Collection Could Look Like

The enforcement mechanisms will closely parallel EEOC class investigations and DOJ Civil Investigative Demands (CIDs).

## EEOC Investigation Pathway

- Charge or systemic investigation initiated
- EEOC requests workforce data, hiring records, compensation data
- Under clause (b)(2), contractor must furnish all requested records
- EEOC investigates alleged racially discriminatory DEI activities
- Findings referred to DOJ or result in agency action

## DOJ Civil Investigation Demand (CID) Pathway

- DOJ initiates investigation under EO 14398 / FCA
- CID issued requiring documents, interrogatory responses
- Contractor must produce books, records, accounts per (b)(2)
- False Claims Act exposure if contractor certified compliance falsely
- Referral to contracting agency for suspension / debarment

# Information Collection and the Paperwork Reduction Act (PRA)

## 🕒 Emergency PRA Authorization — 6 Months Only

### NOW — Before OMB Approves ICR

#### Agencies may **STILL** enforce:

Submission of **existing records** regarding compliance in connection with individual investigations.

#### Examples include records requested by:

- EEOC
- Department of Justice

*Agencies should also expect contractors to self-report potential violations or related lawsuits to the contracting officer.*

### FUTURE — After OMB ICR Approval

#### Full compliance enforcement will include:

- (b)(2) Furnish all records, books & accounts
- (b)(4) Report subcontractor violations
- (b)(5) Report lawsuits challenging the clause

#### What's coming:

- Federal Register notice for *permanent* ICR
- Future rulemaking through notice-and-comment
- Public engagement to minimize burden

*More specifics will emerge once the formal ICR is published.*

# Consequence of Non-Compliance

## Debarment

FAR 9.406-2(b)(viii)

Failure to comply with FAR 52.222-90 is now an enumerated cause for debarment. The suspending and debarring official may debar a contractor for noncompliance.

## Suspension

FAR 9.407-2(a)(11)

Contractors suspected of noncompliance upon adequate evidence may be suspended from government contracting pending investigation.

## Contract Termination

FAR 52.222-90(b)(3)

Contracts may be canceled, terminated, or suspended in whole or in part. Contractor may be declared ineligible for further government contracts.

## False Claims Act Liability

31 U.S.C. 3729(b)(4)

Compliance is expressly material to the Government's payment decisions. False certifications could expose contractors to FCA treble damages and civil penalties.

**If a contractor refuses to agree to bilateral modification → CO should consider termination for convenience (FAR Council Guidance, April 17, 2026)**

# How to Prepare

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## Key Takeaways and Prep Items

# Recommended Immediate Next Steps

## IMMEDIATE (Now–Apr 24)

- 1 Review all DEI programs and initiatives for race/ethnicity-based disparate treatment
- 2 Audit recruitment, hiring, promotion, and vendor selection processes
- 3 Identify all existing contracts that will require modification
- 4 Prepare for bilateral modification requests from COs by April 24

## SHORT-TERM (Apr–Jul 24)

- 1 Respond to CO modification requests on all existing contracts
- 2 Flow down clause language to all subcontractors at every tier
- 3 Establish monitoring protocols for subcontractor compliance
- 4 Document all DEI program changes and policy updates

## ONGOING (Post-Jul 24)

- 1 Monitor ICR publication in Federal Register — expect enhanced audit obligations
- 2 Prepare records management systems for potential EEOC / DOJ or other agency requests
- 3 Train HR, procurement, and legal staff on clause requirements
- 4 Establish reporting protocols for subcontractor violations per (b)(4)

# Key Takeaways

- **FAR 52.222-90 is effective April 24, 2026**, for **new** contracts and solicitations.
- ALL existing contracts **over \$15K must be modified by July 24, 2026**. Refusal could mean termination for convenience.
- **Coverage is broad**: commercial products, commercial services, prime contracts and all subcontract tiers.
- **The False Claims Act** is in play, and compliance is material to government payment decisions. This is serious legal exposure.
- **6,825 audits are projected this year across approximately 400+ agencies**.
  - Enforcement infrastructure is being built now.
- The ICR is emergency-authorized for 6 months. A permanent information collection with full audit-type specifications is coming.
- In the interim, **EEOC and DOJ could** request existing records.
  - Enforcement looks like class investigations and Civil Investigative Demands.

# Technology-Based EO 14398 Compliance Product

New Product Announcement in Partnership with SHRM

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*Certainty – Clarity – Efficiency – Backed By SHRM and DCI*



# EO 14398 Self-Assessment Technology Platform

*An exclusive look at DCI's new product in partnership with SHRM*

Pillar I

## AI-Powered Policy & DEI Review

*Trained on DOJ Guidance, EEOC Guidance, Title VII & Simulated Illegal DEI Policies*

- Reviews website, public statements, uploaded policies and procedures
- Identifies illegal DEI practices and antidiscrimination compliance gaps
- AI model trained on: DOJ guidance, EEOC guidance, Title VII, simulated illegal DEI policies, OFCCP compliance frameworks
- Flags language, programs, and practices that create enforcement risk

Pillar II

## Comprehensive Workforce Survey

*HR, Talent Acquisition, Compensation, Compliance & C-Suite*

- Structured survey covering all employment practice domains
- Probes for risky or illegal DEI programs across all workforce decisions
- Identifies compliance gaps in selection, promotion, pay, and access to programs
- Reaches HR, Talent Acquisition, Compensation, Compliance, and C-Suite stakeholders

Pillar III

## Workforce Analytics

*Statistical Analyses on Hiring, Promotion, Termination, & Pay*

- Broad-based statistical analyses across the full employment lifecycle
- New hire, promotion, termination, and compensation pattern detection
- Uses inferential statistics to identify concerning patterns organization-wide
- Patterns identified → counsel recommends Title VII-style adverse impact analyses

Scan here join the waiting list for DCI's new product



# Q&A



# Thank you for your attention!

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