

# Federal Contractor Compliance Update 2026

*Changing EEO Regulations & Enforcement*

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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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- Participant phone lines are **muted**
- **Submit questions** by sending an email to [questions@dciconsult.com](mailto:questions@dciconsult.com)
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Due to the rapidly changing nature of government regulations, DCI cannot guarantee that these materials will remain up-to-date.

# Agenda

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**U.S. Equal Employment Opportunity  
Enforcement History 101**

**03**

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**Other Federal Happenings  
to Watch in 2026**

**02**

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**Federal Contracting  
Changes and Implications**

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**Recommendations**

# U.S. Equal Employment Opportunity Enforcement History 101

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A Brief History of Civil Rights Regulations

# Foundations of EEO Enforcement (1866–1967)

## Civil Rights Act of 1866 (Section 1981)

- Post-Civil War law ensuring equal legal protection regardless of **race**
- Not enforced by federal agencies

## Executive Order 11246 (1965; amended 1967)

- Created framework for enforcing Title VII
- Formed the Office of Federal Contract Compliance (OFCC)
- **Initially excluded sex**, later added via amendment

1964

1866

1965

## Civil Rights Act of 1964 (Title VII)

- Prohibited employment discrimination based on **race, color, religion, national origin, and sex**
- Created the Equal Employment Opportunity Commission (**EEOC**) to enforce these protections
- **Initially excluded sex**, last minute add-in effort to tank the bill

# OFCCP & EEOC (1967–2024)

## Expanded OFCCP Authority

OFCC gained affirmative action enforcement authority under:

- Section 503 of the Rehabilitation Act (disability)
- VEVRAA (protected veterans)

In 1975, agency renamed the Office of Federal Contract Compliance Programs (OFCCP) to reflect its broadened scope

## Two Enforcement Models

### OFCCP

- Proactive enforcement through compliance evaluations
- Focused on federal contractors' obligations under EO 11246, Section 503, and VEVRAA

### EEOC

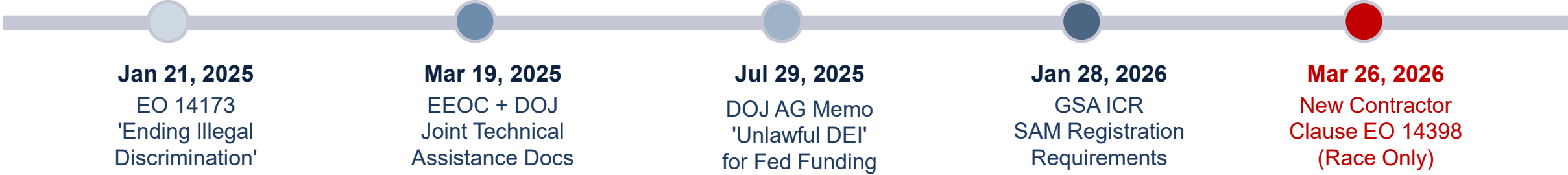
- Complaint-driven investigations
- Emphasis on individual and systemic discrimination claims, often via litigation

## A Shared Legacy

For decades, both agencies secured substantial remedies for affected workers, across administrations and political shifts

Many memoranda of understanding (MOU) between agencies formalizing information-sharing and enforcement protocols

# 2025 to Now – Rooting Out “Illegal DEI”



### EO 14173

- Rescinded EO 11246
- Directs all agencies to terminate DEI-related mandates, requirements, programs, and enforcement actions across the federal government and federal contracting
- Agencies are directed to enforce existing civil rights laws and address illegal DEI practices
- Certification requirement tied to False Claims Act

### EEOC Guidance

- No 'reverse discrimination' — only discrimination
- Workforce balancing by race or sex violates Title VII
- Diverse slates & panels can be unlawful
- DEI training may create hostile work environment
- Retaliation protection for those opposing illegal DEI

### DOJ Memo

- Applies to all federal funding recipients
- Bans race-exclusive internships, mentoring, leadership programs
- Diverse supplier programs favoring minority firms = unlawful
- Facially neutral 'proxies' for race are targeted
- Segregated training by protected characteristic = unlawful

### GSA ICR

- Implements EO 14173 and DOJ Memo guidance
- Proposes changes to the certifications made annually in System for Award Management (SAM)
- Applies to all federal funding recipients (loans, grants)
- If approved, would add new certification item with language mirroring the DOJ Memo
- Focuses on race only

# DOJ Civil Rights Fraud Initiative Secures First Settlement

- **Claims IBM fraudulently attested compliance with anti-discrimination provisions stemming from Title VII**
  - Cites Federal Acquisition Regulation (FAR) 52.222.26 Equal Opportunity
  - Equal opportunity clause included in most federal contracts
- **IBM to pay United States \$17 million**
  - \$8.2 million in restitution
  - \$8.8 million in civil penalties

**Alleged discriminatory practices in place throughout period investigated**

**Bonus compensation** tied to demographic targets

**Diverse slates**, diverse sourcing, including altering interview eligibility

Offering certain **opportunities and resources** only to certain employees on the basis of race, color, national origin, or sex

# False Claims Act & The Whistleblower

## Example

*A federal contracting employer certifies compliance with EO 14398 (no longer uses “illegal DEI” practices) but a whistleblower tells the government the employer still holds required trainings referencing racial privilege and inherent bias – the whistleblower alleges the employer is defrauding the government by accepting federal dollars while continuing “illegal DEI” activities*

Whistleblower has between **6 and 10 years to file claim**, depending on whether the fraud was concealed

Whistleblower is protected from retaliation for **3 years** post filing claim

Burden of proof: whistleblowing was a **“contributing factor”** in retaliatory action

If claims proceed to trial and the government is successful, recoveries include **treble damages**

(Government’s calculated financial loss x 3) + (Statutory penalties per claim)

To claim financial incentives, **including 15-30% of total financial recovery**, whistleblower must be the first to file based on the same set of underlying facts

# Federal Contracting Changes and Implications

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Executive Order 14398: Addressing DEI  
Discrimination by Federal Contractors

# Executive Order 14398: Addressing DEI Discrimination by Federal Contractors



Executive Order (EO) 14398 was issued late on March 26, 2026



The EO pivots from “illegal DEI” to racially discriminatory activities



Race and ethnicity are the only protected bases included, notably sex is not



Requires implementation of a new contract clause for federal contractors, subcontractors, and lower-tier subs under an accelerated timeline



Contractors will certify they are not engaging in racially discriminatory activities, with significant penalties for noncompliance

# Protected Bases: A Deliberate Narrowing

	Race / Color	Ethnicity	Sex	National Origin	Religion
EO 14173 (Jan 2025)	✓	✓	✓	✓	✓
DOJ / Bondi Memo* (Jul 2025)	✓	✓	✓	✗	✗
EEOC / Chair Lucas (2025-26)	✓	✓	✓	✓	✗
GSA Certification (Proposed Feb 2026)	✓	✓	✗	✗	✗
EO 14398 (Mar 2026)	✓	✓	✗	✗	✗

**NOTE:** Regardless of federal actions to date, Title VII dictates employers are prohibited from discriminating based on each of the protected classes above.

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\* The July 2025 DOJ memo mentions national origin and religion, but the substantive guidance focuses on race and sex only.

# New Specificity from Definitions

## *Section 2*

**Racially discriminatory activities:** *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.

**Program participation:** 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.

# New Contract Clause – Section 3

## No racially discriminatory DEI

The contractor will not engage in any **racially discriminatory DEI activities, as defined in section 2** of the Executive Order of March 26, 2026.

## Furnish Info & Provide Access

The contractor will **furnish all information and reports**, including providing access to books, records, and accounts, as required by the contracting agency pursuant to the Executive Order of March 26, 2026, **for purposes of ascertaining compliance with this clause.**

## Suspension / Term / Debarment

In the event of the contractor's or a subcontractor's noncompliance with this clause, **the 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.

## Report Sub-Contractor Violations

The contractor will **report any subcontractor's known or reasonably knowable conduct that may violate this clause** to the contracting department or agency and take any appropriate remedial actions directed by the contracting department or agency.

## Notify Feds of Sub Litigation

The contractor will inform the contracting department or agency **if a subcontractor sues the contractor** and the suit puts at issue, in any way, the validity of this clause.

## False Claims Act Materiality

The contractor recognizes that compliance with the requirements of this clause are **material to the Government's payment decisions** for purposes of section 3729(b)(4) of title 31, United States Code (False Claims Act).

# Déjà vu? (DEI Policing by Each Contracting Agency vs. A Centralized Enforcement Agency)

## EO 11246 – Section 205 (September 24, 1965)

“Each contracting agency shall be primarily responsible for obtaining compliance with the rules, regulations, and orders of the Secretary of Labor with respect to contracts entered into by such agency or its contractors. All contracting agencies shall comply with the rules of the Secretary of Labor in discharging their primary responsibility for securing compliance with the provisions of contracts and otherwise with the terms of this Order and of the rules, regulations, and orders of the Secretary of Labor issued pursuant to this Order...They are further directed to **appoint or designate, from among the agency's personnel, compliance officers**. It shall be the duty of such officers to seek compliance with the objectives of this Order by conference, conciliation, mediation, or persuasion.”

“Regulatory authorities that you are not used to dealing with as HR professionals may now be scrutinizing your HR practices, and you need to make sure you're compliant with civil rights laws.”

- Catherine L. Eschbach, Acting General Counsel, EEOC  
October 27, 2025, SHRM BLUEPRINT 2025 Conference

# Coverage Thresholds

## EO 11246

- No employee or dollars thresholds included in the EO text
- **Directed Secretary of Labor to make threshold determinations**
  - Employee and dollars thresholds were included in implementing regulations
- Different thresholds for Supply & Service vs. Construction contractors

## Section 503 & VEVRAA

- **Statutes include dollars thresholds for single contracts, including inflationary adjustments**
- Included the 50-employee threshold for written AAPs in the implementing regulations

## EO 14398

- No employee or dollars thresholds included in the EO text
- No direct instructions to make threshold determinations in guidance to agencies or FAR

**Absent additional guidance, EO 14398 would apply to all contractors and subcontractors, regardless of contract amount or number of employees in their workforce.**

Depending on OMB guidance, application could also differ between **contract** granting agencies.

# Penalties, Regulations, & Implementation – Sections 4 & 5

**Within 30 days of EO (April 25, 2026)**

Federal agencies must ensure contracts include the required clause.



**Within 60 days of EO (May 25, 2026)**

FAR Council issues interim guidance to agencies (class deviations).



**Sometime before July 24, 2026**

OMB Director issues compliance guidance to agencies.  
Designated federal representatives identify potential “high-risk” sectors.



**Within 120 days of EO (July 24, 2026)**

Agency heads complete internal review and report findings to the Assistant to the President for Domestic Policy.  
Ongoing oversight from each agency commences.



**Future Date TBD**

FAR Council completes formal rulemaking process to update FAR to include new language and provides any additional guidance.

# Federal Contracting Changes and Implications

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The White House's FY 2027 Budget Proposal:  
Insights on OFCCP and EEOC

# The Future of OFCCP, as Proposed\*

*From the White House's FY 2027 Budget Proposal*

- DOL proposes the establishment of a consolidated “streamlined” Office of Civil Rights (OCR)
  - Budget: \$35.3 million and 110 FTE
  - **Proposed \$0 budget for OFCCP**
- The proposed OCR would be responsible for:
  - VEVRAA, Section 503, and non-OSHA whistleblower authorities
- Budget numbers (and even proposed changes, such as the above) essentially serve as a “**wish list**” given to Congress, not the text for appropriations bills
  - \* The proposed budget is extremely unlikely to be passed by Congress as written, similar to what occurred for the FY 2026 budget.
  - Executive-branch **stances** often are conveyed in what is expressed in the budget justifications and accompanying statements.

# The Future of OFCCP, as Probable

- FY 2027 begins under a Continuing Resolution
  - OFCCP gets the same (or similar) amount in appropriations as FY 2026
- Staff continues to dwindle through attrition (i.e., no new hiring)
- Section 503 and VEVRAA complaint investigations continue
  - Historically, only ~100 complaint investigations (combined) per year
- Proactive compliance evaluations under Section 503 and VEVRAA will depend on approval of the ICR for the scheduling letter and itemized listing
  - Resurrect compliance checks and focused review letters?
- Introduce self-audit programs (similar to OSHA and other DOL agencies)?
  - DOL's goal: maximize compliance without additional regulatory burden

# EEOC's Alignment with Executive Branch

**Historically bipartisan, independent agency shifting under Executive Branch**

## **Unitary Executive Theory:**

President controls all agencies within Executive Branch in lieu of appointed leaders independently interpreting administration's priorities

## **White House priorities = EEOC priorities**

- Removing DEI-related discrimination from the workplace
- Restoring merit-based employment decisions
- Acknowledging binary, biological sex only
- Disregarding disparate impact theory
- Bolstering religious liberties
- Protecting U.S. citizens from unfair immigration in employment practices

# EEOC

## *From EEOC's FY 2027 Congressional Budget Justification*

- EEOC is seeking to combat perceived efforts to “*promote ‘equity’ in outcomes rather than equality of opportunity, bending civil rights laws to advantage certain groups while sidelining others and discarding the principle of fair and evenhanded enforcement.*”
- “*In FY 2027, the EEOC will continue to advance this important work by confronting race-based discrimination in all its forms, including employment practices tied to DEI initiatives and programs*”
- “*Based on historical increases in the number of contacts to the Information Intake Group (IIG) since FY 2020, the EEOC anticipates that in FY 2027, the number of calls from the public to its 1-800 number and general email address will continue to exceed 630,000.*”

# EEOC

## *From EEOC's FY 2027 Congressional Budget Justification*

- “Many DEI cases are systemic by their nature, often involving *patterns, practices, or policies of intentional discrimination involving race-based or gender-based* company- and industry-wide programs, policies, and initiatives, and related *employment actions*.”
- “With proposed FY 2027 funding, the EEOC plans to conduct mid- and advanced-level training for field staff and assist them in developing class investigations, *data requests, and data analyses for pattern and practice disparate treatment cases*.”
- Litigating cases under EO 14713 often will require “*large-scale selection data to identify aggrieved individuals and support the existence and extent of a pattern or practice of discrimination*”
  - “These cases will often be against *elite institutions, ranging from Fortune 500 companies to top universities*”

# Other Federal Happenings to Watch

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The Whole of Government Approach to Enforcement

# What Else to Watch: Spring 2026

## Fall 2025 Unified Agenda of Regulatory and Deregulatory Actions

## SPD-15 Timeline Extended (Again)

Two key changes in OMB's Statistical Policy Directive No. 15: *Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity*

- Single question **combining race and ethnicity**
- Middle Eastern or North African (**MENA**) added as a category

Deadline for agencies to submit action plans to OMB moved to March 28, 2027

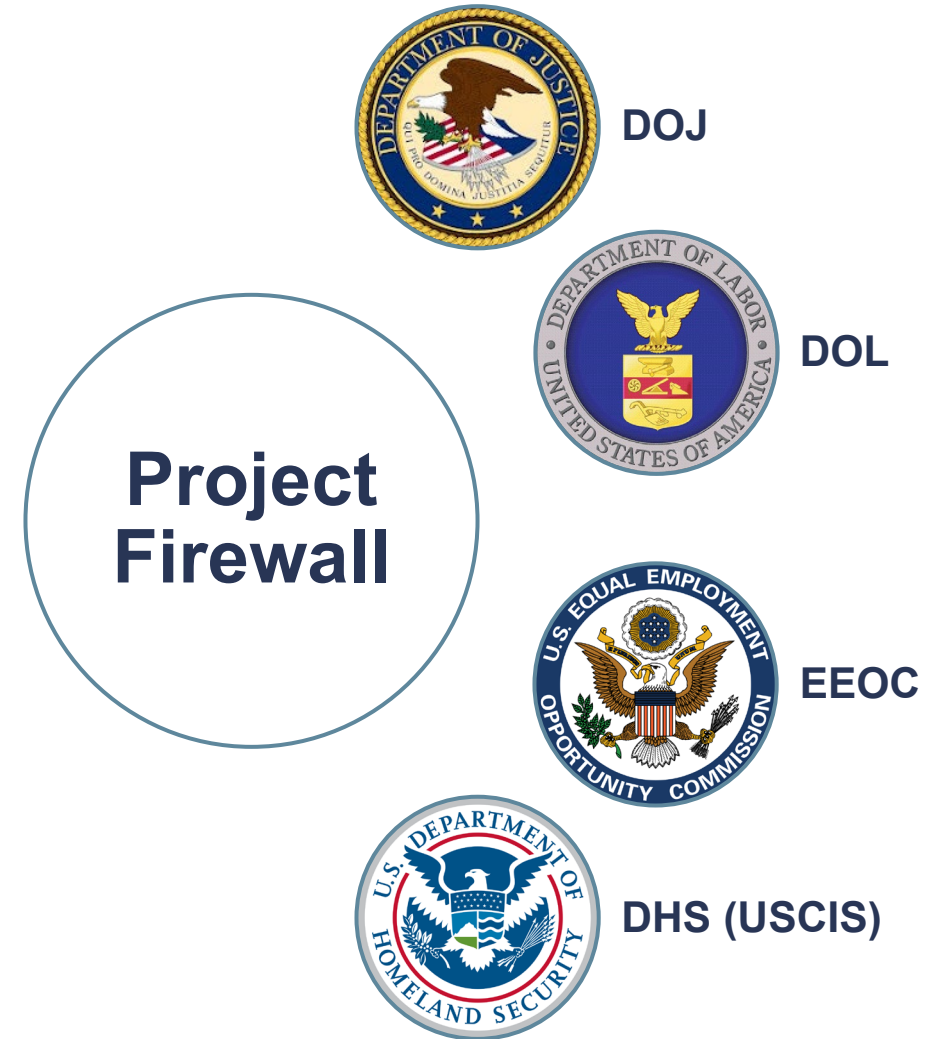
# What Else to Watch: Spring 2026

## EEOC

Targeting “Anti-American” bias against U.S. citizens in hiring, recruitment, and harassment

## Project Firewall

Inter-agency H-1B visa program investigations



# Recommendations

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Readying Contractors for What's Next

# What Contractors Should Do Now

- ✓ Audit DEI Programs Now (or *again*)
- ✓ Conduct privileged analytics to identify potential patterns of disparate treatment and/or proxy discrimination
  - ✓ Consider that limiting your efforts to minimal compliance with federal government contracting requirements alone is increasingly risky
  - ✓ Plaintiff-side litigation firms are stepping in to protect workers where federal enforcement agencies may choose not to act
- ✓ ***Form a cross-functional team*** – HR, Compliance, Legal, Procurement
  - ✓ Carefully review all federal, state, and local government contracts
  - ✓ Thoughtfully develop a strategy for addressing any potentially conflicting compliance requirements

# What Contractors Should Prepare For

- ✓ Prepare for potential “whistleblower” issues under the FCA
  - ✓ Internal communication about policy and program details should be clear and pervasive
  - ✓ Respond promptly, thoughtfully, and thoroughly to issues raised by employees
  - ✓ **Document** concerns raised internally, as well as how and when they were addressed
- ✓ Prepare for agency records requests – organize and review documentation now

# What Contractors Should Monitor & Continue

- ✓ Monitor announcements for updates to race/ethnicity data collection for employees and job applicants, reflecting SPD-15
  - ✓ Create an **internal implementation and communication plan** for updates in human capital management and applicant tracking systems
  - ✓ Once announced, comply with timelines for updates to data collection forms
- ✓ Monitor implementation of EO 14398, as well as proposed or effective changes in SAM

✓ *Continue compliance with obligations under Section 503 & VEVRAA*

# Thank you for your attention!

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