



April Roundtable Meeting

March 23, 2026 | 2:00 PM - 3:00 PM EST

PRESENTERS:

Nita Beecher, David Cohen, and David Fortney



Roundtable Information



- Participant audio lines are muted
- Ask questions in Zoom Q&A or chat
- Submit an email with any questions, feedback, or technical difficulties to:
contact@theinstitute4workplaceequality.org

Upcoming Events

The Institute's Annual Summit

Hosted by *Seyfarth Shaw*

- May 6-7, 2026 | Washington, D.C. or Virtual
- Featuring Keynote Speaker, **EEOC Chair Andrea Lucas** (presenting in-person)
- Limited Spots Available—[Register Now](#)

Upcoming Webinars and Take 5's

- The IBM Settlement Under the False Claims Act: Legal Risks, Compliance, and Key Takeaways
- Your EEO Checklist: Staying Compliant in State Contracting

On Demand Webinars

Available to watch anytime at theinstitute4workplaceequality.org/events

- AI in the Workplace: Legal and Practical Watchpoint
- Year-In-Review, Enforcement Trends, & What Employers Should Expect in 2026
- Understanding the False Claims Act & Civil Investigative Demands

See all upcoming events: theinstitute4workplaceequality.org/events

FEDERAL ACQUISITION REGULATION UPDATE

FAR Clause 52.222-90

Addressing DEI Discrimination by Federal Contractors

What Federal Contractors Must Know — Effective April 24, 2026

Institute for Workplace Equality | Washington, D.C.

Background & Legal Authority

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**

FR Published

**March 31
2026**

Effective Date
(New Contracts)

**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.

EO 14398 — Section 2: Definitions

Source: Executive Order 14398, Section 2 — Signed March 26, 2026 (91 FR 16147, March 31, 2026)

(a) Racially Discriminatory DEI Activities

"Racially discriminatory 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) Program Participation

"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.

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
- ✓ 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 to noncompliance liability.

Critical Dates & Implementation Deadlines



April 24, 2026 — New Contracts

- Insert clause in all new solicitations and resulting contracts over \$15K
- Applies to commercial products and commercial services
- Place of performance must be in the United States
- Amend any open solicitations to incorporate the clause per FAR 1.107(d)

July 24, 2026 — Existing Contracts

- Contracting Officers must make every effort to bilaterally modify existing contracts
- Applies to all definitive and indefinite-delivery contracts over \$15K
- If contractor refuses — CO may consider termination for convenience
- Contracts expiring by December 31, 2026 may be modified at CO discretion

Consequences of Noncompliance

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)

Audit & Enforcement Landscape

6,825

Projected Audits
This Year

430

Federal Agencies
& Sub-Agencies

80

Major Federal
Agencies

Estimated Audit Burden (Per the PRA Supporting Statement)

Contractor Response Time

1.167 hours

per audit per contractor

Government Review Time

16 hours

per audit for agency staff

Submission Method

Electronic

information submitted electronically

Note: Who conducts the audits? Each agency and contracting officer — distributed across all ~430 federal entities.

Information Collection & PRA — What We Know Now

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

as part of an investigation of an alleged violation of the clause.

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.

FAR Council Guidance on Enforcement

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

Immediate Compliance Action 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 over \$15K 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 requests
- 3 Train HR, procurement, and legal staff on clause requirements
- 4 Establish reporting protocols for subcontractor violations per (b)(4)

Open Questions — What We Don't Know Yet

■ The following critical questions remain unanswered. Answers will emerge through the formal ICR, agency guidance, and early enforcement actions.

Enforcement Structure



Who actually conducts the audits?

Will each contracting officer at each of the 430+ agencies conduct independent audits, or will enforcement ultimately be centralized — e.g., under OFCCP, DOJ, or a new interagency structure? Centralization would mirror the OFCCP model; fragmentation raises consistency concerns.

Lookback Period



How far back will audits look?

No lookback period has been specified. Will agencies request 1 year of records? 3 years? Will the lookback run from contract award, clause insertion, or EO 14398's effective date? This is critical for records retention planning.

Subcontractor Coverage



Must subcontractors be necessary to contract performance?

The clause flows down to subcontractors "at any tier" for U.S.-based performance — but does coverage require a nexus to the actual work being performed under the prime contract, or does any subcontract relationship suffice?

Audit Scope



Scope of audit — whole company or contract-specific?

Will auditors review the entire company's workforce and DEI programs, or only the specific location, division, or business unit performing under the federal contract? This distinction dramatically affects audit burden and legal exposure.

ICR / Data Requirements



What specific information and data will be collected?

The Information Collection Request (ICR) has not yet been finalized. We do not know what workforce data, DEI program documents, hiring records, compensation data, or vendor agreements will be required — only that submission will be electronic.

CO Competency



Will contracting officers be trained to assess disparate treatment?

Determining whether an employer engaged in racially discriminatory disparate treatment requires sophisticated statistical and I/O psychology expertise. Will COs at 430+ agencies receive this training, or will specialists (e.g., industrial-organizational psychologists, labor economists) be engaged?

Questions & Discussion

FAR 52.222-90 — Addressing DEI Discrimination by Federal Contractors

Key Resources

- ▶ **EO 14398:** 91 FR 16147, March 31, 2026 — Addressing DEI Discrimination by Federal Contractors
- ▶ **FAR Clause 52.222-90:** DEVIATION APR 2026 — Text issued by FAR Council April 17, 2026
- ▶ **FAR Council Guidance:** Memorandum from OMB/DoD/GSA/NASA, April 17, 2026
- ▶ **PRA ICR:** Emergency PRA Supporting Statement — 6-month clearance; permanent ICR forthcoming
- ▶ **Agency Deviations:** FAR Parts 9, 12, 22, and 52 — Agencies must adopt by April 27, 2026

Questions?

Email us at contact@theinstitute4workplaceequality.org