

# **New Executive Order on DEI: Immediate Impacts for Federal Contractors**

## **EO 14398 - Addressing DEI Discrimination by Federal Contractors**

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**Presenters:**

Nita Beecher, David Cohen,  
David Fortney, and Laura Mitchell

# Scope and Usage of the Information

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# Agenda

- Setting the Stage
- Overview Executive Order 14398
- New Contract Clause
- Implementation Timeline
- Key Takeaways

# Setting the Stage

# The Scope Gap: What Each Order or Memo Focused On

Authority	Race / Color	Ethnicity	Sex	Nat. Origin	Religion
EO 14173 (Jan. 2025)	✓	✓	✓	✓	✓
DOJ Bondi Memo (July. 2025)	✓	✓	✓	✓	✓
EEOC / Chair Lucas (2025–26)	✓	✓	✓	✓	✗
GSA Certification (Proposed, Feb. 2026)	✓	✓	✗	✗	✗
EO 14398 (Mar. 2026)	✓	✓	✗	✗	✗

⚠️ GSA Certification & EO 14398 narrow scope to race/ethnicity only — yet Title VII, DOJ, and EEOC still fully enforce sex-based DEI violations. Employers must comply with ALL frameworks.

# What EO 14173 Specifically Requires

- 1** **Revokes EO 11246**

The 60-year affirmative action framework for federal contractors is eliminated. OFCCP immediately ceases permitting or encouraging workforce balancing based on race, color, sex, sexual preference, religion, or national origin.
- 2** **Compliance Certification**

Contractors must certify they do not operate DEI programs that violate applicable Federal antidiscrimination law — making compliance material to government payment decisions.
- 3** **Private Sector Enforcement**

Agency heads are directed to take 'all appropriate action' to 'advance in the private sector the policy of individual initiative, excellence, and hard work.' DOJ is directed to identify enforcement targets.
- 4** **90-Day Grace Period (Now Expired)**

Federal contractors had 90 days (until April 21, 2025) to continue under the prior regulatory scheme. That window has closed. Full compliance with EO 14173 is now required.

# Proposed GSA Certification For Financial Assistance

- (6) Will comply with the U.S. Constitution, all Federal laws, and relevant executive orders prohibiting unlawful discrimination on the basis of race or color in the administration of federally funded programs (See **Titles VI and VII of the Civil Rights Act of 1964**, the **Equal Protection Clause** of the Fourteenth Amendment, and 2 C.F.R. § 200.303 Internal controls). Federal antidiscrimination laws apply to programs or initiatives that involve discriminatory practices, including those labeled as Diversity, Equity, and Inclusion (DEI) or “diversity, equity, inclusion, and accessibility” (DEIA) programs. Entities that receive federal funds, like all other entities subject to federal antidiscrimination laws, must ensure that their programs and activities comply with federal law and do not discriminate on the basis of **race or color**. **Examples of practices that may violate applicable Federal anti-discrimination laws include:**
  - i. Granting preferential treatment based on **race or color**, such as race-based scholarships or programs, preferential hiring or promotion practices, or access to facilities or resources based on **race or ethnicity**, including through “cultural competence” requirements, “overcoming obstacles” narratives, or “diversity statements;”
  - ii. Segregation based on **race or color**, such as race-based training sessions, segregation in facilities or resources, or implicit segregation through program eligibility;
  - iii. Other unlawful use of **race or color** as criteria, such as race-based “diverse slate” policies in hiring, race-based selection for contracts, or race-based program participation or resource allocation;
  - iv. Training programs that stereotype, exclude, or single out individuals based on protected characteristics or create a hostile environment; or
  - v. Retaliation by taking adverse actions against employees, participants, or beneficiaries because they engage in protected activities related to opposing DEI practices they reasonably believe violate federal antidiscrimination laws. Protected activities include raising concerns or filing complaints about, or objecting to or refusing to participate in, discriminatory programs, trainings, or policies;

# **Executive Order 14398 - Addressing DEI Discrimination by Federal Contractors**

March 26, 2026

# 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**

Through this new clause, contractors will **agree** that they are not engaging in racially discriminatory activities with significant penalties for noncompliance

# Policy Framework: Purpose and Definitions

## Sections 1-2

**Policy & Purpose:** Prohibits racially discriminatory DEI activities in order to:

- Promote merit-based decision-making,
- Reduce inefficiencies and costs, and
- Ensure economy and fairness in federal contracting

**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.

# Protected Bases: A Deliberate Narrowing

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- Covers race and ethnicity only, *sex is conspicuously absent*
- This is a sharp departure from longstanding law and prior executive action
  - Title VII prohibits discrimination based on race, color, religion, **sex**, and national origin
  - EO 14173 referenced race, color, **sex**, sexual preference, religion, or national origin.
  - EEOC memo referenced race, **sex**, or another protected characteristic
  - DOJ 2025 memo referenced race, color, national origin, **sex**, religion, and other protected characteristics
- Mirrors the administration's recent narrowing protected bases, as with the GSA information collection request for financial assistance recipients

# New Contract Clause

## Section 3

*In connection with the performance of work under this contract,  
[the contractor/appropriate party (contractor)] agrees as follows:*

1	<b>No racially discriminatory DEI</b>	The contractor will not engage in any <b>racially discriminatory DEI activities</b> , as defined in section 2 of the Executive Order of March 26, 2026
2	<b>Furnish Info &amp; Provide Access</b>	The contractor <b>will furnish all information and reports</b> , including providing access to books, records, and accounts, as required by the contracting agency pursuant to the Executive Order of March 26, 2026, <b>for purposes of ascertaining compliance with this clause;</b>
3	<b>Suspension/ Term/Debarment</b>	In the event of the contractor's or a subcontractor's noncompliance with this clause, this <b>contract may be canceled, terminated, or suspended</b> in whole or in part, and the contractor or subcontractor may be <b>declared ineligible</b> for further Government contracts;
4	<b>Report Sub-contractor Violations</b>	The contractor <b>will report any subcontractor's</b> 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;
5	<b>Notify on Sub Litigation</b>	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;
6	<b>False Claims Act Materiality</b>	The contractor recognizes that compliance with the requirements of this clause are <b>material to the Government's payment decisions</b> for purposes of section 3729(b)(4) of title 31, United States Code (False Claims Act)

# Implementation Timeline

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

April 25, 2026 · Within 30 days

Federal agencies must ensure contracts include the required clause.



May 25, 2026 · Within 60 days

FAR Council issues interim guidance to agencies.



Unknown · Before 120-day deadline

OMB Director issues compliance guidance to agencies.  
OMB (with AG, Domestic Policy, and EEOC) identifies high-risk sectors; issues guidance.



July 24, 2026 · Within 120 days

Agency heads conduct internal review; report findings to Assistant to the President for Domestic Policy – ongoing oversight thereafter.



Future months / years

FAR Council completes formal rulemaking process.

# Key Takeaways on New Obligations

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- ✓ Audit DEI Programs Now (or *again*)
- ✓ Conduct privileged analytics to identify disparate treatment and/or proxy discrimination
- ✓ Monitor implementation of current EO, as well as proposed or effective changes in SAM
- ✓ Prepare for agency records requests – organize and review documentation now
- ✓ Prepare for new certification requirements and contract clauses that create False Claims Act exposure
- ✓ ***Form cross-functional team*** – HR, Compliance, Legal, Procurement

# Wrap Up & Thank You

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