

Preparing for Compliance with New Executive Order's DEI-Related Contract Clause for Federal Contractors and Subcontractors

April 7, 2026

On March 26, 2026, President Trump signed a new Executive Order titled “[Addressing DEI Discrimination by Federal Contractors](#)” (the March 26 Order), which imposes significant new contractual obligations on federal contractors and subcontractors relating to diversity, equity, and inclusion (DEI) programs and practices. The March 26 Order implements prior Executive Orders on DEI, directs federal agencies to incorporate mandatory contract clauses within 30 days, directs the Attorney General to prioritize False Claims Act (FCA) enforcement against non-compliant contractors, and instructs the Federal Acquisition Regulatory Council (FAR Council) to amend the Federal Acquisition Regulations to codify the new requirements.

The White House simultaneously released a [Fact Sheet](#) (the Fact Sheet) providing important additional context on the Administration's enforcement priorities and rationale. The Fact Sheet makes clear that the Administration views certain contractor DEI programs as illegal race- and ethnicity-based discrimination. It explicitly alleges that some contractors have attempted to conceal ongoing DEI activities.

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This alert summarizes the key provisions of the March 26 Order and Fact Sheet and identifies critical action items for contractors and subcontractors preparing to meet these new requirements, including conducting a privileged inventory of DEI programs, assessing contractual exposure, and creating a compliance plan addressing the March 26 Order’s requirements.

Background

The March 26 Order is the latest in a sustained series of executive actions targeting DEI programs in both the federal government and the private sector.

On January 21, 2025, President Trump Signed Executive Order 14173, “Ending Illegal Discrimination and Restoring Merit-Based Opportunity.”¹ That Order directed federal agencies to include in their contracts a clause providing that contractors agree that their compliance with federal anti-discrimination laws “is material to the government’s payment decisions” for purposes of the FCA and further directed agencies to require contractors to certify that they do not operate DEI programs that violate federal anti-discrimination law. Executive Order 14173 also directed the Attorney General and Director of the Office of Management and Budget (OMB) to identify potential civil compliance investigations of private-sector entities, including federal contractors, as part of a broader effort to deter DEI programs across the economy.

Executive Order 14173 did not supply the specific contractual language necessary to operationalize those commitments, but the March 26 Order does.²

In the approximately fourteen months between Executive Order 14173 and the March 26 Order, federal agencies moved aggressively to deter DEI programs in the private sector:

- The **EEOC** issued formal requests for information to a number of large private-sector employers regarding their DEI programs, signaling heightened scrutiny of race- and ethnicity-conscious employment practices, filed or announced investigations into DEI-related practices at several companies, and moved for subpoena compliance for large amounts of DEI-related data against others.³
- The **Department of Justice** formed a dedicated task force to identify DEI-related enforcement targets across the private sector and issued public statements warning that DEI programs involving differential treatment based on race or ethnicity could violate Title VII and other federal anti-discrimination statutes.⁴ The DOJ announced a Civil Rights Fraud Initiative to use the FCA and pursue claims against companies with DEI programs, and has active investigations under the FCA for DEI-related programs.⁵

Key Provisions of the March 26 Order

1. Mandatory Contract Clause

The March 26 Order directs all federal departments and agencies to ensure that a new clause is included in all new and modified federal contracts and subcontracts within 30 days (April 25, 2026). After

¹ The White House, “Ending Illegal Discrimination and Restoring Merit-Based Opportunity” (January 21, 2025), available [here](#).

² DEI Developments: Executive Order Litigation and the Administration’s Latest Announcements, Cleary Gottlieb Steen & Hamilton LLP (March 24, 2025), available [here](#); Considerations in Advising Boards of Directors on DEI-Related Risks, Cleary Gottlieb Steen & Hamilton LLP (January 15, 2026), available [here](#).

³ Press Release, U.S. Equal Emp. Opportunity Comm’n, EEOC Chair Issues Reminder Letter to Fortune 500 Regarding Title VII Compliance Related to DEI (Feb. 26, 2026), available [here](#); Press Release, U.S. Equal Emp.

Opportunity Comm’n, EEOC Files Subpoena Enforcement Action Against Nike (Feb. 4, 2026), available [here](#); Press Release, EEOC Sues Coca-Cola Beverages Northeast for Sex Discrimination, U.S. Equal Emp. Opportunity Comm’n (Feb. 18, 2026), available [here](#).

⁴ Executive Orders & Memoranda Targeting Diversity, Equity, and Inclusion, Cleary Gottlieb Steen & Hamilton LLP (Feb. 10, 2025), available [here](#).

⁵ Justice Department Using Fraud Law to Target Companies on DEI, Wall St. J. (Dec. 28, 2025), available [here](#); U.S. Department of Justice Office of the Deputy Attorney General “Civil Rights Fraud Initiative” (May 19, 2025), available [here](#).

that date, contracts and subcontracts must include the following clause:

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

1. The contractor will not engage in any racially discriminatory DEI activities, as defined in section 2 of the Executive Order of March 26, 2026 (Addressing DEI Discrimination by Federal Contractors);
2. 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 (Addressing DEI Discrimination by Federal Contractors), 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 department or agency and take any appropriate remedial actions directed by the contracting department or agency;
5. 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; and
6. The contractor recognizes that compliance with the requirements of this clause are [*sic*] material to the government's payment decisions for purposes of section 3729(b)(4) of title 31, United States Code (False Claims Act).

Notably, the March 26 Order expressly extends coverage to “contractors’ subcontracts and subcontractors’ lower-tier subcontracts,” giving it broad reach throughout the federal contracting supply chain.

2. Scope of “Racially Discriminatory DEI Activities”

The March 26 Order defines “racially discriminatory DEI activities” to mean disparate treatment based on race or ethnicity in the following contexts:

- Recruitment and employment (including hiring and promotions);
- Contracting (including vendor agreements);
- Program participation; and
- Allocation or deployment of an entity's resources.

“Program participation” is further defined to include membership or participation in, or access or admission to, training, mentoring, or leadership development programs; educational opportunities; clubs; associations; or similar opportunities sponsored or established by the contractor or subcontractor.

Importantly, the March 26 Order's prohibitions are limited to race and ethnicity. They do not extend to sex or any other protected characteristic.

3. Enforcement Framework

The March 26 Order establishes a significantly expanded and multi-layered enforcement framework:

- **Attorney General enforcement prioritization:** The March 26 Order directs the Attorney General to prioritize potential FCA claims against contractors or subcontractors in violation of the new contract clause, and to ensure the prompt review of related civil actions brought by private persons (*i.e.*, *qui tam* relators). The Attorney General's active prioritization of FCA claims is

consistent with the administration’s approach over the last year.⁶

- **OMB guidance and sector targeting:** The Office of Management and Budget is directed to issue implementation guidance to contracting agencies and to identify “economic sectors that pose a particular risk of entities engaging in racially discriminatory DEI activities based on current or past conduct.”

4. The Administration’s Stated Rationale

The Fact Sheet articulates the administration’s economic and legal justifications for the March 26 Order, which are relevant to understanding the administration’s enforcement posture:

- DEI programs “artificially restrict[] the labor pool, driv[e] up hiring and operational costs, and creat[e] workforce inefficiencies that are ultimately passed on to federal agencies and American taxpayers.”
- DEI programs “increase workforce turnover by elevating immutable characteristics over job performance and jeopardize employee collaboration and problem-solving essential to fostering efficient and high-quality work.”
- “Some entities, including government contractors, have attempted to conceal ongoing DEI activities even as the administration has worked to end them,” and the March 26 Order “establishes strong accountability mechanisms to ensure compliance is genuine and verifiable.”

This last point is particularly significant for compliance purposes. The administration has explicitly designed the March 26 Order’s audit, recordkeeping, and self-reporting mechanisms to detect and deter what it considers concealment efforts.

⁶ See Executive Orders & Memoranda Targeting Diversity, Equity, and Inclusion, Cleary Gottlieb Steen & Hamilton LLP (Feb. 10, 2025); DEI Developments: Executive Order Litigation and the Administration’s Latest Announcements,

5. Enforcement Consequences

The March 26 Order specifies the following consequences for non-compliance:

- Contract cancellation or termination in whole or in part;
- Suspension and debarment for future government contracts; and
- FCA liability, including Attorney General-prioritized government enforcement and actively supervised private qui tam suits.

Key Takeaways and Recommended Action Items

In response to the March 26 Order and Fact Sheet, federal contractors and subcontractors should consider taking the following actions:

1. Conduct a Privileged Review of DEI Programs

Conduct a thorough, attorney-client privileged audit of all existing DEI-related programs, policies, and initiatives. The March 26 Order’s definition of “program participation” combined with the administration’s statement that it will scrutinize attempts to conceal or repackage race-conscious programs demonstrates a need for a close, substantive review. Training programs, mentoring and sponsorship initiatives, leadership development opportunities, supplier diversity programs, affinity or employee resource groups and funding thereof, and DEI-linked executive compensation arrangements should all be examined.

2. Assess Contractual Exposure

Collect and review all prime contracts, subcontracts, and vendor agreements connected to federal government work. The March 26 Order’s explicit extension to lower-tier subcontracts means companies that do not hold federal contracts directly (including subcontractors, vendors, and service providers) are

Cleary Gottlieb Steen & Hamilton LLP (March 24, 2025); Considerations in Advising Boards of Directors on DEI-Related Risks, Cleary Gottlieb Steen & Hamilton LLP (January 15, 2026).

potentially within scope. This supply-chain dimension of the March 26 Order has the most practical significance, and it is essential to understand the full perimeter of contractual exposure before the 30-day implementation window closes.

3. Develop a Compliance Plan

Begin developing a compliance framework that addresses the March 26 Order's recordkeeping and reporting requirements:

- Design procedures for incorporating, executing, and flowing down the new mandatory contract clause to subcontractors;
- Identify and organize books, records, and accounts that may be subject to agency review and assess record-retention related thereto;
- Consider developing a stand-alone report that can be provided to demonstrate compliance;
- Determine who will sign any certification request and establish procedures for ensuring the signer has a good-faith basis attest to compliance;
- Review internal and external-facing statements, including websites, ESG and sustainability disclosures, proxy statements, and marketing materials, for consistency with internal programs and policies and the March 26 Order's requirements; and
- Create protocols for fulfilling the contractor's obligation to report subcontractor conduct that may violate the new clause, including collaboration between federal procurement business units and any supervisory unit over the company's whistleblower hotline.

Conclusion

The March 26 Order is the most operationally significant DEI-related executive action to date for the federal contracting community. Because the administration is likely to take steps quickly to ensure

enforcement of the March 26 Order after the 30-day implementation window, companies should be moving swiftly to prepare.

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