

Newest Executive Order Taking Aim at DEI in Federal Contracting: What Government Contractors and Subcontractors Need to Know

Client Alerts

March 31, 2026

By: David Robbins, Katie Wynbrandt, Jessica Ring Amunson, Michael Vernick, Betsy Henthorne, Daniel Schwei, Brantley Butcher, Erica Turret

Attention government contractors and subcontractors, a new Executive Order (EO) demands your immediate attention. Titled *Addressing DEI Discrimination by Federal Contractors*, the order, issued March 26, directs federal agencies to begin inserting a new clause prohibiting what the EO terms “racially discriminatory DEI activities” into contracts within 30 days. The EO’s text reaches more broadly than prior purported DEI preclusion efforts. Here is what you need to know.

Scope Expansion. The order defines “racially discriminatory DEI activities” as “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, in turn, is defined as “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.” It is important to note that while “disparate treatment” is a term of art in the context of antidiscrimination law, these standards are not expressly tied to existing federal antidiscrimination law—which means prior compliance reviews may not be sufficient. If your organization has conducted DEI program reviews grounded in Title VII and other applicable sources of federal antidiscrimination law, those reviews may need to be revisited with this new—and potentially broader—benchmark in mind.

False Claims Act and Debarment as Enforcement. As the Trump Administration has done with prior EOs, this order designates the new contract clause as “material” under the False Claims Act and directs the Department of Justice to actively consider bringing False Claims Act suits against noncompliant contractors. The EO also threatens debarment for noncompliance. While recipients of federal funds may be familiar with False Claims Act threats, the debarment risk is new and worthy of attention. Because of the highly discretionary standard for debarment, and the deference typically

afforded debarring officials, the express direction to consider debarment may indicate an escalation of the Administration's enforcement efforts against DEI.

Legal Justification for the EO. The EO argues that DEI programs are inefficient—that they create waste and pass unnecessary costs on to the federal government. The EO is framed this way to align with the Federal Property and Administrative Services Act (FPASA), which gives the President authority to promote economy and efficiency in federal procurement. While courts have recently pushed back on broad FPASA-based mandates—the federal contractor vaccine requirement and \$15 minimum wage were both enjoined—presidents have a long history of using FPASA specifically to impose antidiscrimination requirements on contractors. Litigation challenging the order is likely, whether before or after agency implementation efforts materialize, and we will be monitoring any litigation that develops, including its implications for non-parties and other regulated entities.

The Retroactivity Question Is Unresolved. One significant open question is whether this order applies to contracts already in place or only to new ones going forward. The clause-by-clause implementation approach suggests prospective application, but the enforcement provisions are written broadly enough to leave ambiguity. Given this ambiguity and the highly deferential debarment standard discussed above, contractors may wish to plan and prepare as if existing contracts are potentially in scope.

What To Do Right Now. Given the 30-day clock already running, we recommend auditing your DEI-related programs, policies, and activities against the EO's new standard—not just against federal antidiscrimination law. We further recommend extending that review to your subcontractor relationships and any third-party programs “sponsored” by your organization. This review should include a candid assessment of False Claims Act and debarment exposure, particularly if programs include any race-or ethnicity-conscious elements. Jenner & Block lawyers will keep a close eye on agency implementation guidance and any FAR amendments, as we hope those will fill in many of the gaps the order currently leaves open.

Jenner & Block lawyers are available to assist with any of these steps and will continue to monitor developments as they unfold.

Related Attorneys

David Robbins

Partner

[drobbins@jenner.com](mailto:d Robbins@jenner.com)

+1 202 639 6040

Katie Wynbrandt

Partner
kwynbrandt@jenner.com
+1 202 637 6389

Jessica Ring Amunson

Partner
jamunson@jenner.com
+1 202 639 6023

Michael Vernick

Partner
mvernick@jenner.com
+1 202 626 5052

Betsy Henthorne

Partner
bhenthorne@jenner.com
+1 202 637 6367

Daniel Schwei

Special Counsel
dschwei@jenner.com
+1 202 626 5058

Brantley Butcher

Associate
bbutcher@jenner.com
+1 202 639 3896

Erica Turret

Associate
eturret@jenner.com
+1 202 637 6383

Related Capabilities

Education

Government Contractor Litigation and Compliance

Organizational Values and Strategy Task Force

on legal matters and/or firm news of interest to our clients and colleagues. Readers or attendees should seek specific legal advice before taking any action with respect to matters mentioned in this publication or at this event. The attorney responsible for this communication is Brent E. Kidwell, Jenner & Block LLP, 353 N. Clark Street, Chicago, IL 60654-3456. Prior results do not guarantee a similar outcome. Jenner & Block London LLP, an affiliate of Jenner & Block LLP, is a limited liability partnership established under the laws of the State of Delaware, USA and is authorised and regulated by the Solicitors Regulation Authority with SRA number 615729. Information regarding the data we collect and the rights you have over your data can be found in our Privacy Notice. For further inquiries, please contact dataprotection@jenner.com.

Stay Informed

