

## President Trump Issues Executive Orders Pertaining to Federal Contractors and OFCCP Compliance

JANUARY 22, 2025

### Background

As one of his first acts in office, on January 20, 2025, President Donald Trump began issuing a flurry of executive orders covering various policy decisions. The six executive orders discussed below cover a wide range of policy updates related to federal contractors, affirmative action, and diversity & inclusion efforts, all which President Trump discussed or referenced during his 2024 presidential campaign. We expect more executive orders to be issued by President Trump in the days and weeks ahead, and litigation is likely to occur related to these executive orders and others.

### Analysis & Impact

#### (1) [Ending Illegal Discrimination and Restoring Merit-Based Opportunity](#)

**Among other actions, this order revokes Executive Order (EO) 11246 (requiring affirmative action in employment for federal contractors), prohibits illegal and unlawful diversity, equity, and inclusion (DEI) practices by the Office of Federal Contract Compliance Programs (OFCCP), and encourages private sector employers to end “illegal DEI discrimination.”**

- The order permits federal contractors to continue to comply with the EO 11246 regulatory scheme for 90 days. It does not apply to lawful federal or private-sector employment and contracting preferences for veterans of the U.S. armed forces or persons protected by the Randolph-Sheppard Act, 20 U.S.C. 107 et seq. The EO is silent on Section 503 and VEVRAA obligations, compliance, and enforcement.
- The EO revokes EO 13672, an order that amended EO 11246 to include sexual orientation and gender identity. This action comports with another EO issued on January 20 targeting gender identity and stating that “sex” in the United States is binary.

- It affirms the mandate of EO 13279—“Equal Protection of the Laws of Faith-Based and Community Organizations”—that the employment, procurement, and contracting practices of federal contractors and subcontractors shall not consider race, color, sex, sexual preference, religion, or national origin in ways that violate the nation's civil rights laws.
- It instructs OFCCP to immediately stop:
  - 1) promoting DEI;
  - 2) holding federal contractors and subcontractors accountable for “affirmative action”;
  - 3) allowing or encouraging contractors and subcontractors to engage in workforce balancing based on race, color, sex, sexual preference, religion, or national origin.
- It requires federal executive agencies to develop and incorporate clauses for contracts/grants that condition payment on the contractor’s certification that it follows all federal anti-discrimination laws and its certification that it does not operate any programs promoting DEI that violate any applicable federal anti-discrimination laws.
- The order also targets DEI for private employers and directs the attorney general in consultation with the Office of Management and Budget (OMB) director to submit a report to the assistant to the president for domestic policy within 120 days containing recommendations for enforcing federal civil rights laws and taking other appropriate measures to encourage the private sector to end illegal discrimination and preferences, including DEI. The report shall contain a “proposed strategic enforcement plan” incorporating the below:
  - 1) Key sectors of concern within each executive agency's jurisdiction;
  - 2) The most egregious and discriminatory DEI practitioners in each sector of concern;
  - 3) A plan of specific steps or measures to deter DEI programs or principles (whether specifically referred to as "DEI" or otherwise) that constitute illegal discrimination or preferences;
  - 4) For each agency, identifying up to nine potential civil compliance investigations of publicly traded corporations, large non-profit corporations or associations, foundations with assets of \$500 million or more, state and local bar and medical associations, and institutions of higher education with endowments over \$1 billion;
  - 5) Agency identification of other strategies to encourage the private sector to end illegal DEI discrimination and preferences and comply with all federal civil rights laws;
  - 6) Agency consideration of litigation that would be potentially appropriate for federal lawsuits, intervention, or statements of interest; and
  - 7) Development/implementation of potential regulatory action and sub-regulatory guidance.

- It also directs the attorney general to join forces with the secretary of education and issue, within 120 days, guidance to higher education institutions and state/local educational institutions regarding measures and practices to comply with the *SFFA v. Harvard/UNC* Supreme Court ruling.
- The EO specifically states that it allows for the exercise of free speech and it does not prohibit academics at “Federally funded institutions of higher education as part of a larger course of academic instruction from advocating for, endorsing, or promoting the unlawful employment of contracting practices prohibited by [the] order.”

**Impact:** This far-reaching order will significantly impact federal contractors’ compliance obligations under EO 11246, perhaps in ways not yet articulated by the Trump Administration. Concerns about the avoidance of “illegal DEI” by federal contractors and private employers may warrant a privileged risk assessment focusing on the contractor’s/employer’s DEI practices and initiatives, including internal guidance/policies and externally-facing websites and publications.

## **(2) Initial Rescissions of Harmful Executive Orders and Actions**

**Revokes executive orders signed by President Joe Biden during his term.** President Trump rescinded dozens of executive orders entered by President Biden. This action, while widespread and impacting various aspects of the federal government, is not unprecedented during administration transitions. Two rescinded executive orders that impact OFCCP compliance and government contracting are:

(a) [Executive Order 14055 of November 18, 2021 \(Nondisplacement of Qualified Workers Under Service Contracts\)](#)

This EO removes the requirement for federal contractors and subcontractors on a follow-on service contract for the same or similar services to offer employment to qualified workers on the predecessor contract.

(b) [Executive Order 14069 of March 15, 2022 \(Advancing Economy, Efficiency, and Effectiveness in Federal Contracting by Promoting Pay Equity and Transparency\)](#).

This EO directed the Federal Acquisition Regulatory (FAR) Council to implement a proposed rule that addresses the use of salary history in the hiring and pay-setting process for federal employees, federal contractors, and subcontractors. On January 8, 2025, the proposed rule was withdrawn, noting a lack of sufficient time remaining in the Biden administration to implement it.

(3) [Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government](#)

**Indicates the Trump Administration will “defend women’s rights and protect freedom of conscience by using clear and accurate language in policies that recognize women are biologically female, and men are biologically male.”** This executive order directs the secretary of health and human services to provide clear public guidance on a set of definitions including “sex,” “women,” “woman,” “girl,” “girls,” “men,” “man,” “boy,” “boys,” “female,” “male,” gender ideology,” and “gender identity.” It also directs various agencies to take specific actions to implement the order including requiring the attorney general to issue guidance “to ensure the freedom to express the binary nature of sex and the right to single-sex spaces in workplaces and federally funded entities covered by the Civil Rights Act of 1964.” It directs the attorney general, the secretary of labor, the general counsel and chair of the Equal Employment Opportunity Commission (EEOC), and other agency heads with enforcement responsibilities under the Civil Rights Act to prioritize investigations and litigation to enforce the “rights and freedoms identified.” It also rescinds various presidential memoranda, executive orders, and agency guidance on the topic of gender identity.

This EO specifically rescinds parts of the EEOC “Enforcement Guidance on Harassment in the Workplace” issued in April 2024 that conflict with the requirements in the order. OFCCP relied upon the EEOC guidance in recently released harassment guidance aimed at the construction industry, which we expect to be rescinded to the extent it conflicts with the new order.

**Impact:** The language of this order is vague but could be construed as giving federal agencies the authority to refuse to provide contracts/grants to federal contractors and subcontractors that recognize gender identity in their workplaces. EEOC may no longer allow employers to provide information about non-binary gender in EEO-1 filings, and job seeker/employee self-identification options used by federal contractors, subcontractors, and private employers may be implicated by this order.

(4) [Ending Radical And Wasteful Government DEI Programs and Preferecing](#)

**Directs the termination of all discriminatory programs, including illegal DEI and “diversity, equity, inclusion, and accessibility” (DEIA) mandates, policies, programs, preferences, and activities in the federal government, including “equity action plans”; “equity actions, initiatives, or programs, grants, or contracts; and all DEI or DEIA performance requirements for employees, contractors, or grantees.** Federal contractors that have provided DEI training or DEI training materials to agency or department employees will be reported to the director of the OMB.

**Impact:** Language in this order tracks language included in the Dismantle DEI Act of 2024, which was co-sponsored by Vice President J.D. Vance in June of 2024 while in his role as a senator from Ohio. Given the broad language in the order, we anticipate the OMB director, attorney general, and director of the Office of Personnel Management will review and revise all existing federal employment practices, union contracts, and training policies or programs. Private employers and federal contractors may wish to monitor these developments as they may signal where additional pressure on DEI programming may arise.

#### **(5) [Regulatory Freeze Pending Review](#)**

**The order immediately withdraws any rules that have been sent to but not published in the *Federal Register*, until they can be reviewed and approved.** The order also directs a postponement for 60 days from January 20, 2025, of the effective date for any rules published in the *Federal Register* or any other rules that were issued but have not yet taken effect.

**Impact:** We anticipate that OFCCP's recently-announced [CC-257 Report](#), which requires covered construction contractors and subcontractors to provide monthly information to the agency on employee work hours and employee count by race/ethnicity, gender, and trade, will be impacted by this order. The first report was due by April 15, 2025.

#### **(6) [Hiring Freeze and Return to In-Person Work](#)**

**This order freezes the hiring of federal civilian employees in the executive branch.** No federal civilian position vacant at noon on January 20, 2025, may be filled and no new position may be created. The order does not apply to military personnel of the armed forces or to positions related to immigration enforcement, national security, or public safety. Within 90 days, OMB shall submit a plan to reduce the size of the federal government's workforce through efficiency improvements and attrition. The Return to In-Person Work order requires department heads to terminate remote work arrangements and require employees to return to work in-person on a full-time basis, with limited exemptions.

**Impact:** We anticipate that this order will lead to attrition in the federal workforce which will slow down efficiency in enforcement efforts.

[Ogletree Deakins' OFCCP Compliance, Government Contracting and Reporting Practice Group](#) will monitor developments with respect to these and other policy changes and will post updates on the [OFCCP Compliance, Government Contracting and Reporting](#) blog as additional information becomes available.

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