

DEADLINE LOOMS TO ADD DEI CLAUSES TO FEDERAL CONTRACTS: WHAT CONTRACTORS NEED TO KNOW ABOUT NEW GUIDANCE

Insights
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Federal agencies just received guidance on how to incorporate the new DEI compliance clause into their contracts – and the deadlines are tight. Indeed, agencies have until **today** to add the clauses to new contracts and until Monday to update their acquisition regulations. Additionally, contracting officers must seek to modify all existing contracts to include the new clause by July 24, with few exceptions. Here's what federal contractors need to know about the new guidance and your evolving DEI and EEO compliance obligations.

Join FP on April 30 for our webinar: Federal Contractor Obligations Around DEI and the False Claims Act – New Guidance for Federal Contractors. [Register here](#).

What Are the New DEI Compliance Requirements?

President Trump's March 26 [Executive Order](#) directed federal agencies to include a new DEI-related clause in all contracts covered by the Federal Property and Administrative Services Act. [You can review the key aspects of the order here](#).

Who is covered? The clause applies to contracts performed in the US and valued above the micro-purchase threshold,

Related People



Sheila M. Abron
Partner

[803.740.7676](tel:803.740.7676)



Jennifer B. Sandberg
Regional Managing Partner

[404.240.4152](tel:404.240.4152)

which is generally \$15,000. The rules also apply to subcontractors and their lower-tier subcontractors.

What does the clause cover? Unlike the prior Executive Order related to DEI, the March 26 order and subsequent guidance from the federal government specifically define what types of “DEI” are problematic and have attempted to clarify the scope. Key definitions include:

- **Racially discriminatory diversity, equity, and inclusion (DEI) activities** means disparate treatment based on race or ethnicity in recruitment, employment, contracting, program participation, or allocation of company resources.
- **Program participation** means participation in, or access to: training, mentoring, or leadership development programs, as well as educational opportunities, clubs, associations, or similar opportunities that are sponsored by the contractor or subcontractor.

What must be included? Federal agencies were given 30 days to begin incorporating the new clause, which has been recently released by the government.

- **The clause obligates Contractors to:**
 - Refrain from engaging in any racially discriminatory DEI activities
 - Furnish all information and reports – including access to books, records, and accounts – to show compliance, if requested
 - Report any subcontractor conduct that may violate the clause
 - Notify the contracting officer if a subcontractor sues them in a way that puts the clause’s validity at issue
 - Acknowledge that the contract can be canceled, terminated, or suspended – or the contractor declared ineligible for further Government contracts
 - Include the clause in relevant subcontracts (“flow-down”)

Agencies also must confirm to the White House Domestic Policy Council by July 24 that they have implemented the

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clause and describe any deviations from the FAR Council's model clause text.

Action Item: Be prepared to hear from your agency's contracting officer about a contract modification to add the clause. Most existing contracts need to incorporate the clause by July 24. If a contractor refuses to add the clause, the contracting officer is directed to consider whether the contract should be terminated for convenience. The contracting officer has discretion over contracts that expire by December 31 this year.

Information Collection and Evaluations

In addition to the guidance above, the FAR Council released a "supporting statement" that provides further guidance on contractors' obligations related to the information they must submit to demonstrate compliance with the Executive Order. The FAR Council has requested "emergency clearance" of this data collection, which allows the requests to bypass certain traditional approval mechanisms.

For contractors, this means their contracting officer will be permitted to seek "books, records, and accounts" for purposes of determining compliance. Essentially, contractors will be audited by their contracting officers to ensure compliance.

Over 600,000 government contracts and subcontracts were issued during Fiscal Year 2025, according to government estimates, and the FAR Council proposes that 1% of those award recipients – or 6,420 contractors – will be required to furnish information on their respective DEI efforts to contracting officers. The government estimates the time burden to be minimal for contractors to submit relevant information to contracting officers.

Action Item: Be prepared to produce records and respond to contracting officer requests as provided in the new clause. Begin to self-audit your records now so that you have full insight into what your records contain. Consider working with your legal counsel for this audit.

Significant Consequences for Violations

Violations of the DEI clause may result in contracts being canceled or suspended and businesses becoming ineligible for future federal contracts.

- Moreover, federal contractors face potential referral to the Department of Justice (DOJ) for investigation and enforcement related to violations of the False Claims Act (FCA), which could lead to triple damages and civil penalties. A recent \$17 million FCA settlement with IBM illustrates the DOJ's commitment to curbing programs it deems unlawful under federal anti-discrimination laws and shows the government's commitment to enforcement in this area. [You can read more about the IBM settlement here.](#)

6 Steps to Consider Taking Now

1. Conduct a Privileged Audit and Review of Your Programs and Practices. Conduct a privileged review of your current programs, policies, and employment and vendor agreements to ensure they align with the new order and identify anything that may need to be updated or discussed with your attorney.

2. Review Your Subcontractor Agreements. Assess whether your subcontracts should be updated to include related compliance language, reporting obligations, or other procedures to ensure compliance.

3. Prepare for Contract Changes. New contracts will now be required to include the DEI clause, and existing contracts are set to be modified by July 24, so your contracts and legal teams should be ready to review and respond when negotiating new and modified federal contracts. This also includes having a comfort level that none of your policies and practices violate the new clause, so as not to subject the company to False Claims Act liability.

4. Watch for More Guidance. The OMB has been directed to issue guidance and identify sectors at particular risk for violations. If your industry ends up on that list, you should be prepared for additional scrutiny and develop an action plan.

5. Consult Your Attorney. Consider reaching out to experienced legal counsel to review and potentially revise your employment, contracting, and related materials, policies, and procedures. Also, since the order includes potential reporting obligations, you may want to work with

counsel to determine best practices for documenting and showing compliance.

6. Track Lawsuits. A coalition of diversity, higher education, and contractor organizations filed an April 20 lawsuit in Maryland federal court alleging the Executive Order violates the First Amendment. It claims that the EO is unconstitutionally broad and vague and could coerce federal contractors into giving up lawful DEI programs. The lawsuit seeks an injunction blocking federal agencies from enforcing the EO. We'll track this litigation and provide updates as warranted. In the meantime, federal contractors should be prepared to comply.

Want to Learn More? Join FP on April 30 for a comprehensive analysis of:

- New clause requirements and definitions
- Immediate action items and compliance strategies
- Managing subcontractor compliance
- Enforcement mechanisms and investigation procedures

[Register here](#) for the webinar.

Conclusion

If you have questions, reach out to your Fisher Phillips attorney, the authors of this Insight, or any member of our [DEI and EEO Compliance Team](#) or [Government Contracting, Compliance, and Reporting Practice Group](#). We will continue to monitor developments related to all aspects of workplace law. Make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information.