

Higher Education and DEI: Assessing Next Steps After the New Presidential EOs

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Takeaways

- The EOs objectives are to eliminate unlawful or “illegal” DEI initiatives, thereby subjecting all DEI programs to rigorous examination.
- For higher education institutions, DEI practices, programs and inquiries as they apply to students and employees should be assessed and revised where needed.
- All higher education institutions should carefully review all grants and contracts (both federal and private) to determine whether the grant itself funds programming or research that may violate the EO or requires the institutions to make representations about their practices that may violate the EO.

Related link

- [What Higher Ed Needs to Know About the Trump Administration’s EO on Gender Ideology](#)

Article

President Donald Trump vowed to eliminate DEI and DEIA in the federal government, safeguard equal opportunity and compel schools to discontinue discriminatory admissions policies. During his first two days in office, President Trump signed two executive orders (EOs) – “Ending Radical and Wasteful Government DEI Programs and Preferencing” and “Ending Illegal Discrimination and Restoring Merit-Based Opportunity” – referring to DEI and DEIA initiatives as violative of civil-rights laws and cultivating “illegal preferences.” Both EOs mandate the termination of all discriminatory programs, policies, activities, training programs and regulations.

What Does the “Ending Radical and Wasteful Government DEI Programs and Preferencing” EO Say?

The EO’s stated purpose is to end illegal and immoral discrimination through DEI programs and preferencing in federal hiring practices. The EO overturns President Biden’s EO 13985 which required every federal agency and entity to submit “Equity Action Plans” to further DEI initiatives.

Referring to Biden’s EO as “public waste and shameful discrimination,” President Trump detailed that “Americans deserve a government committed to serving every person with equal dignity and respect.”

The EO requires termination of all “equity-related” grants or contracts and all DEI or DEIA performance requirements for contractors or grantees. All agency heads must provide the Director of the Office of Management and Budget with a list of all federal grantees who received federal funding to provide or advance DEI, DEIA or “environmental justice” programs, services or activities since January 21, 2021. The

deputy head of an agency or department is required to “recommend actions to align agency or department contracts (including set-asides) and grants with the policy of equal dignity and respect.”

What Does the “Ending Illegal Discrimination and Restoring Merit-Based Opportunity” EO Say?

The EO aims to safeguard civil rights and foster “individual initiative, excellence and hard work.” The EO condemns “illegal DEI and DEIA policies” and rescinds EO 11246, which prohibited federal contractors from discriminating against employees or applicants based on race, color, religion, sex or national origin and established affirmative action obligations about race and sex for such contractors.

Federal agencies are required to “combat illegal private-sector DEI preferences, mandates, policies, programs and activities.” Mandates, policies, programs and activities that promote “affirmative action,” “diversity,” “equity” or related practices are prohibited. The EO directs the Director of OMB to remove all references to DEI and DEIA principles from federal acquisition, contracting, grants and financial assistance procedures.

Federal agencies and the Attorney General are directed to execute actions to implement the principles of the EO regarding individual initiative, excellence and hard work within the private sector. To ensure that DEI initiatives are deterred, the Attorney General, in consultation with the agency heads, is required to submit a report within 120 days that identifies: a plan to prevent DEI programs/initiatives; identify “up to nine potential civil compliance investigations of ... foundations with assets of \$500 million dollars or more ... and institutions of higher education with endowments over one billion dollars”; and determine “other strategies” to encourage the private sector to end illegal DEI discrimination and preferences, including appropriate potential litigation for the administration to pursue.

Within 120 days, the Attorney General and Secretary of Education are directed to issue guidance to all higher education institutions that receive federal grants or participate in the federal student loan assistance program regarding the “measures and practices” necessary to comply with the Supreme Court’s decision in *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, 600 U.S. 181 (2023). This guidance will likely impact admissions for the incoming fall class in 2026.

What Higher Education Institutions Should Know

The EO does not alter existing legislation regarding discrimination in contracting, employment or other areas, but signals increased investigation and enforcement activities concerning DEI programs believed to be based on discriminatory principles.

Higher education institutions that receive federal funding through contracts, grants or cooperative agreements must comply with the EO’s directives related to federal contractors, including the rescission of EO 11246.

Higher education institutions should consider taking the following steps:

- Audit their existing federal grants and contracts and determine whether they are receiving funding for research or programming that may violate the EO.
- Review hiring and admissions practices and DEI initiatives for compliance with

nondiscrimination statutes, such as Titles VI and VII of the Civil Rights Act.

- Meet with stakeholders, including the board and senior officers, to assess the risks and the institution's risk tolerance.
- Eliminate or revise policies or practices that are inconsistent with existing law in accordance with institutional risk tolerance.
- Evaluate templates and guidelines for grant writing to identify language that may run afoul of the EO.
- Assess representations regarding DEI commitments required by grants, gifts and contracts with private funding sources to determine associated risk.
- Review materials for onboarding, orientation and other mandatory training relating to DEI to assess compliance.
- Consider reassuring the campus community of the institution's commitment to equal opportunity and nondiscrimination.
- Educate the campus community regarding resources to support psychological safety and wellness for all students and employees.

This is a developing situation, and we are continuing to analyze and understand its implications. Please reach out to your Jackson Lewis attorney with questions and for potential solutions.

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