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Trump Order Prohibiting Contractors' "Racially Discriminatory DEI Activities" Challenged in Federal Lawsuit

Government Contractor Compliance & Regulatory Update on **April 27, 2026**

Quick Hit: A complaint has been filed in the U.S. District Court for the District of Maryland, contending that President Trump's recent Executive Order (the "Order") barring contractors from engaging in "racially discriminatory DEI activities" violates First Amendment free speech and freedom of association rights of federal contractors, and exceeds the President's authority under the Procurement Act.

Key Takeaway: As discussed in a prior post, the Order seeks to restrict contractors' and subcontractors' diversity, equity, and inclusion ("DEI") efforts, imposing numerous restrictions and risks on government contractors and subcontractors, and the Administration is moving quickly to implement the Order's requirements. The lawsuit seeks to have the Order deemed unconstitutional or otherwise invalid and, if successful, could result in the elimination of its requirements. Employers should carefully track how the court handles this challenge, but until the court takes any action impacting the Order, it remains in effect and contractors should continue to prepare for its implementation.

More details: The Order requires federal agencies, within 30 days of its issuance, to "ensure that contracts and contract-like instruments, including contractors' subcontracts and subcontractors' lower-tier subcontracts, include" a clause addressing "racially discriminatory DEI activities." The Federal Acquisition Regulatory Council (the "FAR Council") has already taken steps to implement the Order, issuing a new Federal Acquisition Regulation ("FAR") deviation for inclusion in new contracts starting April 24, 2026, and instructing agencies to "make every effort" to have the clause added to existing contract by July 24, 2026.

As discussed in more detail in our prior post, the new FAR required by the Order prohibits contractors and subcontractors from engaging in "racially discriminatory DEI activities," defined 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." The Order directs federal agencies to enforce the new clause through contract cancellation, termination, or suspension, debarment, and False Claims Act ("FCA") suits. Although the government has already been active in using the FCA to police DEI efforts it deems to violate federal anti-discrimination laws, the Order provides the government more options and potentially impacts a larger swath of DEI-related efforts.

The Maryland district court litigation was brought by a group of university professors, contractors, and subcontractors, including the American Association of University Professors and the National Association of Minority Contractors. They are represented by Democracy Forward, the legal advocacy group that unsuccessfully challenged Trump's 2025 executive orders targeting DEI in the private sector. In February 2026, the Fourth Circuit vacated the district court's injunction blocking two provisions of the President's executive orders, finding the provisions, as written, did not constitute facial violations of plaintiffs' First and Fifth Amendment rights.

Here, the plaintiffs seek preliminary and permanent injunctions prohibiting federal implementation of the Order. Plaintiffs bring three claims:

In their first count, they contend the Order violates their First Amendment free speech and free association rights, because the Order "[o]n its face, … chills and aims to censor Plaintiffs' protected expression and association that concerns race, ethnicity, diversity, equity, or inclusion." The plaintiffs contend that the Order is overbroad, impacting protected speech, and forces them "to either chill their own constitutionally protected expression and association and maintain their federal contracts and subcontracts, exercise their First Amendment rights and lose access to federal contracts and subcontracts, and partnerships with federal contractors and subcontractors, or attempt to do both and face the prospect of civil and criminal penalties." They argue the Order "is not justified by a substantial or compelling government interest and is not narrowly tailored to serve any such interest, nor is it substantially related to a sufficiently important governmental interest."

In their second count, they allege the Order violates the First Amendment's prohibitions on the government imposing content-based restrictions on speech. They contend, among other things, that "[b]y prohibiting federal contractors and subcontractors from engaging in expression that the Order deems 'racially discriminatory DEI activities,' the … Order discriminates against speech and association that relates to race, ethnicity, diversity, equity, and inclusion," and "[b]y imposing a requirement that contractors agree that neither they, nor their subcontractors or employees, 'engage in' any so-called 'racially discriminatory DEI activities,' the … Order conditions the receipt of federal funds on contractors agreeing not to engage in expression or association that is protected by the First Amendment."

In their third count, Plaintiffs contend that the Order's FCA-related components exceed the President's authority under the Procurement Act, which they claim limits the President's ability to issue procurement-related Executive Orders to those that are "necessary to carry out" the purposes of the Procurement Act, which must have a close nexus to the act's purpose of providing "an economical and efficient system" for procurement. Plaintiffs argue "no 'close nexus' exists between the FCA provision [in the Order] and the Procurement Act," and cite to the lack of "factual findings" regarding such a nexus and that the Order does not "make any effort to explain why the threat of FCA liability is necessary to insulate the government from any costs that may be associated with the conduct described in the Order's definitions."

We will continue to monitor *National Association of Diversity Officers in Higher Education v. Trump*, No. 8:26-cv-01532, and other developments in the space.

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