The March 26, 2026 Executive Order on Federal Contractors and Diversity, Equity Inclusion, and Accessibility:
What You Need to Know[1]

The Trump administration has repeatedly sought to remove requirements ensuring equal opportunity in federal contracting and to pressure companies that do business with the government to end all diversity, equity, inclusion, and accessibility (DEIA) programs. The March 26, 2026 Executive Order "Addressing DEI Discrimination by Federal Contractors" is the latest in this series of attacks. As with other executive orders, guidance documents, and actions, the Trump administration seeks to pressure federal contractors to preemptively end programs designed to eliminate barriers for Black workers and workers of color. Contrary to the Executive Order's unsupported assertions, diversity, equity, inclusion, and accessibility measures benefit everyone by expanding the labor pool to ensure the most qualified candidates are hired; improving employee retention by making safe environments for all; and boosting collaboration and productivity by including diverse perspectives into problem-solving and teamwork. Prior attempts by the Trump administration to condition funding on restricting constitutional rights or following false interpretations of civil rights laws have been blocked.[2] **Here's what you need to know.**[3]

The March 26, 2026 Executive Order requires federal agencies to add new terms to agreements with federal contractors. Unlike prior executive orders and other actions by the Trump administration, by its terms, the March 26, 2026 Executive Order applies only to federal contractors—individuals or companies providing goods or services to the government—not recipients of grants, loans, or other forms of federal financial assistance. The March 26, 2026 Executive Order:

- Mandates federal agencies include a new clause in all federal contracts by April 25, 2026, requiring contractors and subcontractors to certify they do not engage in "racially discriminatory DEI activities" in connection with performance of the contract. "[R]acially discriminatory DEI activities" are defined as "disparate treatment" based on race or ethnicity in hiring, promotions, contracting, training, and program participation. "Disparate treatment" is a legal term for intentionally making decisions based on race or other characteristics;
- Requires contractors to give the contracting agencies access to their books and records for compliance review upon request;
- Permits agencies to terminate, suspend, or debar contractors for noncompliance and exposes contractors to liability under the False Claims Act for false certifications by stating that compliance with the certifications is "material" to the government's decision to enter into a contract;
- Directs the Office of Management and Budget to issue implementation guidance, including sector-specific guidance developed in coordination with the Attorney General,

the Assistant to the President for Domestic Policy, and the Chair of the Equal Employment Opportunity Commission;
- Directs the Attorney General to pursue False Claims Act actions, including reviewing whistleblower actions, for false certifications; and
- Requires conforming revisions to the Federal Acquisition Regulations.

The March 26, 2026 Executive Order will not take effect until federal agencies take action to implement the Executive Order. On April 17, 2026, the FAR Council ordered federal agencies to add terms imposing these requirements to new contracts of $15,000 or more, including contracts for commercial products and services, starting on April 27, 2026, and must add these terms to existing contracts by July 24, 2026.

Many of the March 26, 2026 Executive Order's mandates are not new. For 60 years, Executive Order 11246—which was issued by President Lyndon B. Johnson—prohibited federal contractors from engaging in "disparate treatment" in employment, promotion, membership, or other employment opportunities until President Trump rescinded it in January 2025. Executive Order 11246 expressly prohibited federal contractors from discriminating based on race, sex, and other protected characteristics in "upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship." Executive Order 11246 and its implementing regulations prohibited quotas and preferences and permitted contractors to use merit selection principles. The Office of Federal Contract Compliance Programs, which enforced regulations implementing the executive order, investigated discrimination against all groups. These regulations required federal contractors to provide access to their records in discrimination investigations and permitted agencies to terminate, suspend, or debar contractors. Executive Order 11246 also required contractors to take active steps to address discriminatory barriers that kept qualified people from being hired or promoted, but the Trump administration rescinded Executive Order 11246 without replacing it with alternative protections.

Federal law already prohibits discrimination based on race by most federal contractors. It also permits actions to ensure equal opportunity. The March 26, 2026 Executive Order does not change that. The executive order states that its purpose is "preventing racial discrimination" by federal contractors, but the administration's actions have shown it is interested in doing the exact opposite. The law has long prohibited discrimination, while allowing actions that reduce barriers to opportunity.

Title VII of the Civil Rights Act of 1964 prohibits most employers—including those that do business with the federal government—from discriminating based on race, sex, and other protected characteristics in the terms and conditions of employment. Title VII does not prohibit voluntary efforts to open the doors of opportunity to all qualified workers[4] or prevent workplace discrimination, and this executive order does not change that. Moreover, the Supreme Court affirmed as recently as 2023 that entities can make decisions based on race in order to remedy specific instances of discrimination, even under the stringent standards applied to government action.[5] Private employers may similarly make decisions based on race in limited circumstances.[6]

Executive action does not change civil rights protections that are enshrined in law, and this executive order does not change federal contractors' obligations under Title VII to have a workplace free from discrimination.

Many diversity, equity, inclusion, and accessibility initiatives do not involve decisions based on race—and the law permits actions to remedy discrimination. In general, lawful diversity, equity, inclusion, and accessibility programs do not involve hiring, firing, promoting, contracting, or making other employment decisions based on race or ethnicity.[7] These initiatives can generally include:

- Hosting employee resource groups themed around the experiences of particular communities that are open to all;
- Holding trainings that educate employees about discrimination to ensure a Title VII-compliant workplace;
- Expanding recruitment efforts to include additional sources that can provide access to qualified candidates from community groups underrepresented in an employer's workforce, such as Historically Black Colleges and Universities and other Minority Serving Institutions; and
- Collecting data on your applicant pool and workforce, identifying persistent barriers that prevent qualified individuals from getting hired or promoted, and taking steps to address those barriers consistent with Title VII.

Federal contractors should review their programs to ensure they are lawful and maintain lawful programs designed to advance equal opportunities for underrepresented groups, including Black communities and communities of color, instead of abandoning them. For more information on lawful diversity, equity, inclusion, and accessibility programs, see the additional resources listed below.

Rolling back lawful diversity, equity, inclusion, and accessibility programs can increase contractors' risk of being sued for discrimination. Federal contractors are required to comply with applicable federal, state, and local laws prohibiting discrimination, including Title VII. Black people and other people of color, women, people with disabilities, and LGBTQ+ people are more likely to experience discrimination in the workplace and in business opportunities. Diversity, equity, inclusion, and accessibility initiatives can help contractors prevent and address discriminatory practices, thereby also providing them a key defense to liability.[8] On the other hand, ending these programs can send the message to employees that equal opportunity is not valued in the workplace. This can be used as evidence in court to show an employer discriminated or allowed a hostile workplace, creating legal risk.

The administration has repeatedly been blocked from adding unlawful certification requirements. Courts across the country have blocked similar certifications in federal agreements after finding they were unlawful, including certifications prohibiting so-called "discriminatory DEI" imposed by the Departments of Justice, Education, Homeland Security, Housing and Urban Development, Transportation, Health and Human Services, Labor, and the Environmental Protection Agency.[9] Courts have found similar certifications to be unlawful because they are vague and confusing, chill protected speech, and contradict the laws Congress passed that authorized the funding. Your contract with the federal government may be impacted by an existing court order. At the end of this Explainer, we have included resources where you can seek additional guidance.

The federal government cannot lawfully restrict expression advancing equity outside of government-funded activities. Efforts to advance equity, promote inclusion, and address systemic disparities can involve protected expression—particularly in the context of advocacy, training, and internal organizational dialogue. Courts have recognized that diversity, equity, inclusion, and accessibility are not merely neutral topics; they express a viewpoint that the exclusion of historically disadvantaged groups is undesirable.[10]

While the federal government has the authority to limit how contractors can use federal money, the First Amendment prohibits the government from unilaterally prohibiting federal contractors from speaking on matters of public concern, including race, outside of the federally-funded work.[11] The federal government may not restrict access to federal contracts by requiring contractors to abandon their right to equity-related expression. [12]

False Claims Act charges against federal contractors for "racially discriminatory DEI activities" will face legal hurdles. The False Claims Act (FCA) is a law that Congress passed to prohibit fraud against the government.[13] Lawsuits under the FCA can be brought by either the federal government or private parties, called relators. While the Department of Justice has begun to investigate contractors under the False Claims Act based on companies' diversity, equity, inclusion, and accessibility activities, the fact of an investigation does not mean that a claim would succeed in court.

In order to prove a violation of the FCA, the government or relator must prove: (1) the recipient of federal funds submitted a claim or statement to the federal government that it knew was false, or was deliberately indifferent to or recklessly disregarded whether it was true or false,[14] 2) the claim was material to the government's decision to enter the contract; and 3) as a result, the government entered into the contract or made a payment.[15] These same standards would apply to FCA claims against federal contractors for alleged "racially discriminatory DEI activities." The federal government or relator would have to prove that the contractor actually treated people differently based on race or ethnicity. Courts will likely look to existing federal antidiscrimination law—not the federal government's radical interpretation of that law, to judge whether this "disparate treatment" occurred.[16] Contractors who can document they assessed their programs and determined the programs were not "racially discriminatory DEI activities" may be able to raise that in their defense. And the federal government's claim that the anti-DEI certification is "material" is not enough under law; courts consider multiple factors to determine if a claim is material.[17]

The bottom line: Executive orders cannot change federal statutes or the U.S. Constitution. The Trump administration will have to take additional actions to implement its March 26, 2026 Executive Order and will face obstacles if it tries to hold contractors accountable for the Order's unlawful standards.

For more information, please see the following resources:

- Advancing Diversity, Equity, Inclusion, and Accessibility in a Time of Uncertainty: What Employers Need to Know by LDF, Asian Americans Advancing Justice – AAJC, Democracy Forward, LatinoJustice, Lawyers' Committee for Civil Rights Under Law, and the National Women's Law Center
- Trump Executive Order Attacks Workplace Equal Opportunity by the National Women's Law Center
- Defending Equal Opportunity Programs Against Threats of False Claims Act Liability: What You Need to Know by LDF, Asian Americans Advancing Justice – AAJC, and the National Women's Law Center.
- The Economic Imperative to Ensure Equal Opportunity: Guidance for Employers, Businesses, and Funders by LDF.
- Advancing Equal Employment Opportunity; Putting the Affirmative Action College Admissions Cases in Context by the Lawyers' Committee for Civil Rights Under Law.
- Safeguarding and Strengthening Diversity, Equity and Inclusion (DEI) Initiatives (July 2024) and Despite Attacks, Civil Rights Protections Endure, Supplemental Report (July 2025) by Democracy Forward.

- Trump's Executive Orders Rolling Back DEI and Accessibility Efforts, Explained by ACLU

[1] This "What You Need to Know" document is not intended to, and should not be understood to, provide legal advice. Specific programs, initiatives, or questions should be reviewed with counsel.
[2] *See, e.g., City of Chicago v. United States Dep't of Justice*, No. 25-C-13863, 2026 WL 114294, at *6 (N.D. Ill. Jan. 15, 2026) ("Put simply, the Anti-DEI Condition appears contrary to established federal anti-discrimination law.") (citing *City of Seattle v. Trump*, No. 2:25-cv-01435-BJR, 2025 WL 3041905, at *7-8, (W.D. Wash. 2025); *Cnty. of Santa Clara v. Noem*, No. 25-cv-08330-WHO, 2025 WL 3251660 (N.D. Cal. Nov. 21, 2025) (DHS required federal grant recipients to certify they "do not … operate any programs that advance or promote DEI, DEIA, or discriminatory equity ideology in violation of Federal anti-discrimination laws"); *City of Fresno v. Turner*, No. 25-cv-07070-RS, 2025 WL 2721390 (N.D. Cal. Sept. 23, 2025) (court enjoined similar certifications imposed by HUD, DOT, HHS, EPA); *Rhode Island Coal. Against Domestic Violence v. Bondi*, 794 F. Supp. 3d 58 (D.R.I. Aug. 8, 2025) (DOJ required federal funding recipients to certify they do not "operate any programs (including any such programs having components relating to diversity, equity, and inclusion) that violate any applicable federal civil rights or nondiscrimination laws."); *Chi. Women in Trades v. Trump,* 778 F. Supp. 3d 959 (N.D. Ill. Apr. 15, 2025) (enjoining DOL from enforcing certification requirement in Executive Order 14173).
[3] On April 20, 2026, a coalition of nonprofit organizations representing university faculty, federal contractors, and federal subcontractors challenged the March 26, 2026 Executive Order, arguing it violates the First Amendment and ultra vires doctrine. The case, which is still pending, is *National Association of Diversity Officers in Higher Education, et al v. Trump*, Case No. 8:26-cv-01532 (D. Md filed Apr. 20, 2026).
[4] *See, e.g., Mlynczak v. Bodman*, 442 F.3d 1050 (7th Cir. 2006) (finding that U.S. Department of Energy's recruitment policy was intended to ensure "diversity in the applicant pool for positions at the agency" and was not evidence of discrimination because the efforts "were of the type that expand the pool of persons under consideration, which is permitted"); *Duffy v. Wolle*, 123 F.3d 1026, 1038-39 (8th Cir. 1997) ("An employer's affirmative efforts to recruit minority and female applicants does not constitute discrimination. . . . An inclusive recruitment effort enables employers to generate the largest pool of qualified applicants and helps to ensure that minorities and women are not discriminatorily excluded from employment.").
[5] *Students for Fair Admissions v. Pres. & Fellows of Harv. Coll*, 600 U.S. 181, 214-16 (2023).
[6] *See generally Johnson v. Transp. Agency*, 480 U.S. 616 (1987); *United Steel Workers of Am. v. Weber*, 443 U.S. 193 (1979); *Doe v. Kamehameha Schs./Bernice Pauahi Bishop Est.*, 470 F.3d 827, 839, 849 (9th Cir. 2006) (en banc) (upholding program for Native Hawaiian students implemented by private school under Section 1981); *Rabbani v. Gen. Motors Corp.*, No. 3:98cv425/RV, 2000 WL 36752977, at *4 (N.D. Fla. July 26, 2000) (upholding General Motors's Minority Dealer Development Program under Section 1981), *aff'd*, 252 F.3d 443 (11th Cir. 2001); *see also Price Waterhouse v. Hopkins,* 490 U.S. 228, 239 & n.3 (1989) (plurality opinion) (noting that Title VII's "announcement that sex, race, religion, and national origin are not relevant to the selection, evaluation, or compensation of employees" did not encompass "the special context of affirmative action").
[7] N.Y. State Bar Ass'n, Task Force on Advancing Diversity, Report and Recommendation 57 (Sept. 20, 2023), https://nysba.org/app/uploads/2023/09/NYSBA-Report-on-Advancing-Diversity-9.20.23-FINAL-with-cover.pdf (explaining that permissible diversity, equity, inclusion, and accessibility programs are designed to ensure that all employees have a full and equal opportunity to participate, contribute, and succeed in the workforce and typically "do not make or encourage decisions to be made on the basis of race or another protected characteristic").
[8] *Faragher v. City of Boca Raton*, 524 U.S. 775, 807 (1998); *Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742, 765 (1998) (discussing affirmative defense to harassment liability available where, among other things, an employer "exercised reasonable care to prevent and correct promptly any sexually harassing behavior" such as by informing employees of internal anti-harassment policies); *Agusty-Reyes v. Dep't of Educ.*, 601 F.3d 45, 55 (1st Cir. 2010) (holding that a reasonable jury could conclude that the failure to disseminate the harassment policy and complaint procedure precluded the employer from establishing the first prong of the defense); *Ortiz v. Sch. Bd.*, 780 F. App'x 780, 786 (11th Cir. 2019) (per curiam) (denying summary judgment to the employer on the *Faragher-Ellerth* affirmative defense where there was evidence that the employer had failed to take reasonable steps to disseminate its anti-harassment policy); *EEOC v. Spud Seller, Inc.*, 899 F. Supp. 2d 1081, 1095 (D. Colo. 2012) (determining a trial was required on the issue of whether the employer, which employed some individuals who spoke only Spanish, could satisfy the *Faragher-Ellerth* affirmative defense where the employer's handbook contained an anti-harassment policy in English, but there was no evidence that its provisions were translated into Spanish or that written translations were supplied to Spanish-speaking employees); *Miller v. Woodharbor Molding & Millworks, Inc.,* 80 F. Supp. 2d 1026, 1029 (N.D. Iowa 2000) (stating the gravamen of an effective anti-harassment policy includes three provisions: (1) training for supervisors, (2) an express anti-retaliation provision, and (3) multiple complaint channels for reporting the harassing conduct) (collecting cases supporting inclusion of each provision), *aff'd*, 248 F.3d 1165 (8th Cir. 2001); C*lark v. United Parcel Serv., Inc.*, 400 F.3d 341, 349-50 (6th Cir. 2005) ("While there is no exact formula for what constitutes a 'reasonable' sexual harassment policy, an effective policy should at least … provide for training regarding the policy.").

[9] *See supra* note 2 (listing cases).
[10] *Thakur v. Trump*, 148 F.4th 1096, 1108 (9th Cir.), *withdrawn and superseded by* 163 F.4th 1198 (9th Cir. 2025)
[11] *Santa Cruz Lesbian and Gay Community Center v. Trump,* 508 F.Supp.3d 521 (N.D. Cal. 2020).
[12] *See Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015).
[13] https://www.jdsupra.com/legalnews/year-end-false-claims-act-roundup-key-6634261/
[14] 31 U.S.C. 3729(a).
[15] *United States ex rel. Schutte v. SuperValu Inc.*, 598 U.S. 739 (2023).
[16] *Am. Fed'n of Teachers v. Dep't of Education*, 796 F. Supp. 3d 66, 105 (D. Md. 2025) (Department of Education's letter and certification requirement regarding diversity, equity and inclusion "call[ed] … settled [lawful] practices into question.")
[17] *Universal Health Services, Inc. v. United States ex rel. Escobar*, 136 S. Ct. 1989, 2001 (2016); *Godecke v. Kinetic Concepts, Inc.*, 937 F.3d 1201, 1213 (9th Cir. 2019).