

LEGAL ALERT

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EXECUTIVE ORDER 14173 INJUNCTION AND UPDATES

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BACKGROUND

On January 21, 2025, President Trump signed [Executive Order 14173](#) titled “Ending Illegal Discrimination and Restoring Merit-Based Opportunity” (the “Order”). [As was noted in our February 10, 2025, article](#), the Order amounted to an initial step by the Trump administration to end diversity, equity, and inclusion (“DEI”) as well as diversity, equity, inclusion, and accessibility (“DEIA”) in federal contracting.

In the aftermath of the Order being signed, government contractors and recipients of federal grants faced multiple questions, the most important of which was how the Order will affect the current contract grant allocation processes and what actions contractors and grant recipients must now take to follow this new regulatory framework. The answer, at the time, was not immediately clear.

RECENT DEVELOPMENTS

On February 3, 2025, a lawsuit was filed in the United States District Court of Maryland challenging the legality of the Order. The [lawsuit](#), filed by a group of plaintiffs led by the National Association of Diversity Officers in Higher Education (the “Plaintiffs”), challenged the Order as being unconstitutional in certain aspects. The Plaintiffs sought an injunction to prevent the Order from going into effect.

On February 21, 2025, Judge Adam Abelson partially granted the Plaintiffs’ request for a preliminary injunction for two reasons:

- First, Judge Abelson found that the Plaintiffs were likely to succeed on the merits of their claim that the Order is unconstitutionally vague in violation of the Fifth Amendment. Specifically, the operative terms used in the Order including “DEI,” “equity-related,” “promoting DEI,” “illegal DEI,” “illegal DEI and DEIA policies,” and “illegal discrimination or preferences” were not sufficiently defined. Without sufficient definitions of these essential terms, contractors and grant recipients were left to guess what types of “DEI programs or principles” the Trump administration considers “illegal” and is seeking to “deter.” Because of this, the Court found that the Order was too vague and that challenges to the Order were likely to succeed.

- Second, Judge Abelson found that the Plaintiffs were likely to succeed on the merits of their claim that the Order violates the First Amendment. A significant portion of his analysis rested on the certification provision of the Order that would require contractors and grant recipients to “certify that it does not operate any programs promoting DEI that violate any applicable Federal anti-discrimination laws.” Judge Abelson observed that “the express language of the Certification Provision demands that federal contractors and grantees essentially certify that there is no ‘DEI’... in **any** aspect of their functioning, regardless of whether the DEI-related activities occur outside the scope of the federal funding.”

The effect of the breadth of this wording is that the prohibition on DEI could affect other parts of a contractor or grant recipients’ business that are entirely *unrelated* to the contract or grant award. For instance, if a contractor’s website states that it values diversity, equity, and inclusion in its business and hiring practices, even if those principles are not applied to bidding on a federal contract, that website statement could run afoul of the Order and the certification provision. And faced with the threat of potential perjury charges or prosecution under the False Claims Act, federal contractors and grant recipients, federal contractors and grant recipients have little choice but to apply an overinclusive definition of the ill-defined terms in order to avoid risking liability. Because the Order reaches beyond conduct associated with federal contracts and awards, and in fact could penalize contractors and grant recipients for actions that are entirely separate and unrelated from the contract and award, Judge Abelson found that the Order likely amounted to content discrimination in violation of the First Amendment and therefore the Plaintiffs were likely to succeed in their challenge of the Order.

Because Judge Abelson found that the constitutional challenges raised by Plaintiffs would also apply to all contractors and grantees, the scope of the injunction applies to anyone seeking a government contract or grant and not just the Plaintiffs in the case. Additionally, on March 10, 2025, Judge Abelson clarified his Order, explaining that the injunction applies to all “federal executive branch agencies, departments, and commissions, and their heads, officers, agents, and subdivisions,” and not just those that were specifically named in the complaint.

WHAT IS NEXT?

Judge Abelson’s injunction, although informative of the grounds on which the Order might ultimately be ruled unenforceable, does not automatically resolve the uncertainty faced by federal contractors. On March 4, 2025, the government sought to stay the injunction pending its appeal of the Court’s injunction. The outcome of the appeal may not be known for several months. Additionally, the Trump administration may redraft the Order to provide more clarity to the undefined terms in an attempt to address the First Amendment and Fifth Amendment concerns identified by Judge Abelson. Ultimately, the Order may remain in place, whether in its current form or in a modified form.

What this means in the long run is that federal contractors and grant recipients will need to continue to be vigilant and monitor the changing legal framework to ensure they are compliant with any new changes that may develop. As new developments unfold, Hahn Loeser & Parks will continue to monitor this issue and provide further relevant updates as they become available.

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Executive Order 14173 is subject to litigation and it is expected that the Office of Federal Contract Compliance Programs will likely introduce guidance interpreting the Order, it is subject to change.