

# LEGAL ALERT

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## EXECUTIVE ORDER 14398 FURTHER EXPANDS DEI-RELATED COMPLIANCE OBLIGATIONS FOR FEDERAL CONTRACTORS

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On March 26, 2026, the President issued [Executive Order 14398](#), “Addressing DEI Discrimination by Federal Contractors” (the “Order” or “EO 14398”). The Order buttresses Executive Order 14173, “Ending Illegal Discrimination and Restoring Merit-Based Opportunity” (“EO 14173”) issued on January 21, 2025, which we have [previously reported on](#). EO 14173 revoked the longstanding affirmative action requirements for federal contractors of Executive Order 11246 and imposed a certification requirement causing contractors to certify that they do not operate any programs promoting DEI that violate any applicable Federal anti-discrimination laws.

EO 14398 establishes a new mandatory federal contract clause requiring federal contractors and subcontractors to agree that “in connection with the performance of work under [the applicable] contract” they (i) “will not engage in any racially discriminatory DEI activities,” (ii) will provide access to books and records for purposes of ascertaining compliance, and (iii) report any “known or reasonably knowable conduct” of a subcontractor that may violate the prohibition against “racially discriminatory DEI activities.” The contract clause required by the Order also embeds a contractual acknowledgement that compliance is material to government payment decisions for purposes of the False Claims Act, creating additional exposure for non-compliance.

The Order defines “racially discriminatory DEI activities” 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 any entity’s resources. Further, “program participation” is defined in the Order as membership or participation in, or access or admission to: training, mentoring, or leadership development programs; educational opportunities; clubs; associations; or similar opportunities that are sponsored or established by the contractor or subcontractor. This definition encompasses a wide variety of activities that may violate the Order if they favor or burden any race or ethnicity.

The Order requires the mandatory clause to flow down through subcontracts, imposing the obligations at each tier. Contractors at each tier will be required to include the clause in their subcontracts and will be subject to the requirement to report any “known or reasonably knowable conduct” of a subcontractor that may violate the prohibition against “racially discriminatory DEI activities.” The prime contractor is obligated to report potential violations of any subcontractor and is exposed to a range of penalties set forth in the Order for noncompliance by any subcontractor. Penalties for non-compliance by contractors and subcontractors include contract termination, suspension, debarment and exposure to civil action under the False Claims Act. EO 14398 requires that all federal agencies must add the new mandatory clause to their contracts and “contract-like instruments” within 30 days, by April 25, 2026.

The Order effectively narrows the scope of permissible diversity initiatives contractors can engage in when doing business with the federal government and these prohibitions flow down to all subcontractors. This may create tension with relevant state and local affirmative action requirements, many of which affect race. Contractors should carefully review their practices in light of the prohibitions in EO 14398 with an eye toward seeking a balance that could avoid risk under the Order without overcorrecting and being out of compliance with state and local mandates.

Hahn Loeser will continue to monitor the implementation of EO 14398 closely and provide 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.*