

## DEI-Related Executive Orders: What Now?

Since January 20, 2025, the White House has issued several executive orders (EOs) that may impact the compliance and operations of nonprofit organizations. At least two of the EOs directly address diversity, equity, and inclusion (DEI) initiatives, and others address diversity-related issues more broadly.

The DEI landscape is shifting rapidly, and there are still many unknowns, including the scope of what is considered “DEI.” It is likely that some of these questions will be challenged in court and we may not have all the answers for a while.

In the meantime, it is important for nonprofit organizations to monitor these changes and, if needed, consult with an attorney for guidance.

### **I. Which EOs impact DEI?**

Several of the Trump Administration’s recent EOs impact issues of diversity and equity more broadly. Two EOs name and address “DEI,” specifically.

#### **[Ending Radical and Wasteful Government DEI Programs and Preferencing](#)**

**(Jan. 20, 2025)**

This EO orders federal agencies to remove DEI-related positions, grants, and policies. It also orders federal agencies and departments to provide the administration with lists of (a) federal contractors who have provided DEI training or materials, and (b) federal grantees who received federal funding to provide DEI or environmental justice-related programs, services, or activities.

#### **[Ending Illegal Discrimination and Restoring Merit-Based Opportunity](#)**

**(Jan. 21, 2025)**

The underlying premise of this EO is that institutions have adopted “race- and sex-based preferences” as a form of discriminatory and “illegal” DEI. The EO addresses DEI at two levels: (1) federal government, and (2) private sector.

**Federal Government:** The EO revokes five previous EOs dating back to 1965, which were focused on promoting equal employment opportunities for federal contractors and the federal government more broadly.

The EO mandates the termination of all “discriminatory and illegal preferences, mandates, policies, programs, activities, guidance, regulations, enforcement actions, consent orders, and requirements” in executive departments and agencies. It also requires the Office of Federal Contract Compliance Programs to immediately stop promoting diversity and holding federal contractors responsible for affirmative action.

**Private Sector:** The U.S. Attorney General must submit a report with “recommendations for enforcing Federal civil-rights laws and taking other appropriate measures to encourage the private sector to end illegal discrimination and preferences, including DEI.” The report will, among other things, identify “the most egregious and discriminatory DEI practitioners in each sector,” and propose a plan for deterring DEI.

Additionally, each federal agency must identify up to nine potential civil compliance investigations of the following five entities: (1) publicly traded corporations; (2) large nonprofit corporations or associations; (3) foundations with \$500 million or more in assets; (4) state and local bar and medical associations; and (5) higher education institutions with endowments over \$1 billion.

## **II. What is the impact of the DEI EOs on nonprofits?**

The key issue to monitor is how the administration defines “illegal” DEI efforts. For instance, does programming that provides support for specific groups—BIPOC business owners, LGBTQ+ youth, women in STEM, families of children with disabilities—violate the recent EOs? Some organizations’ entire mission is to serve particular identity-based groups. What does that mean for those organizations?

Organizations that (1) receive any federal funding, and/or (2) fall into one of the five private-sector categories listed in the January 21st EO appear to be most at risk of heightened scrutiny and compliance investigations. However, there are risks for other 501(c)(3) and 501(c)(4) nonprofit organizations, too. Nonprofits can lose their tax-exempt status if they have purposes or engage in substantial activities that are illegal or violate public policy. If DEI-related activities are deemed to violate public policy, the IRS could use this “illegality doctrine” to revoke an organization’s tax-exempt status.

Ultimately, the true scope and impact of the EOs is still unknown. There are currently lawsuits challenging several of the recent EOs and undoubtedly more to follow. It is important to stay informed as the landscape changes.

### **III. How should my organization respond?**

There are many unknowns and uncertainties right now, but it is important to stay calm, avoid overreaction, and focus on the items you can control.

**1. Determine whether your organization receives any federal funding, either directly or indirectly. If so, review those grant agreements.**

First, spend some time identifying any federal funding your organization receives, whether it's funded directly or through an intermediary. If you're unsure, review grant agreements or contact the funder for more information.

You should also read and assess any grant agreements related to federal funding. Some federal contracts allow the government to unilaterally terminate the contract, so it is important to know if your grant agreement includes similar language. Contact an attorney to help with this, if needed.

**2. Evaluate any programs or practices that may touch on diversity, equity, and inclusion.**

As has been stated, the recent EOs offer minimal guidance about the scope and definition of "DEI" or what is considered "illegal discrimination or preferences." The Trump Administration has used the term broadly in public communications, and it may be applied broadly by federal agencies like the IRS.

It is a good idea to conduct a self-audit of your organization's programs and activities. Groups that receive federal funding or are one of the five private-sector entities outlined in the January 21<sup>st</sup> EO are likely most at risk, but all nonprofit organizations would benefit from an internal assessment. Identify vulnerabilities or areas that could be perceived as "illegal discrimination" under the administration's broad use of the term. Consider steps to mitigate your risk, including adjusting language on your website or outward-facing materials, reviewing internal policies, updating training materials, and examining contracts for compliance with the recent EOs.

**3. Review your policies and employee handbook.**

It is important to remember that Title VII of the Civil Rights Act of 1964 already prevents certain employers (those with 15+ employees) from discriminating against employees based on race, sex, religion, and other protected categories. State and federal laws prevent other forms of discrimination, like age and disability discrimination.

Your organization should have an employee handbook that includes anti-discrimination and anti-harassment provisions. You may be concerned that these policies are risky

under the recent EOs. In fact, the opposite is true: Well-written policies can help mitigate your risk. It's a good idea to ask a labor and employment attorney to draft or review your policies to ensure compliance with the recent EOs and other relevant legal requirements.

Finally, nothing in the EOs prevents employers from seeking out a diverse candidate pool, as long as hiring decisions are based solely on qualifications and not illegal preferences. It may be wise to broaden and diversify the pool of candidates to include candidates with and without protected characteristics (like race and sex). For additional guidance on complying with the EOs in hiring practices, speak with an attorney.

#### **4. Spend time reviewing organizational compliance more broadly.**

Because nonprofits are under heightened scrutiny, it is a great time to make sure your organization is complying with state and federal law and following nonprofit best practices more broadly. The Nebraska Civic Engagement Table, Nonprofit Association of the Midlands, Coalition for a Strong Nebraska, or an attorney can assist with this.