Navigating USG Executive Orders on Diversity, Equity, and Inclusion

Guidance Document

February 4, 2025



Overview of the Landscape

In his first few days in office, President Trump issued several Executive Orders that addressed topics related to diversity, equity, inclusion, and accessibility *(DEIA).* Such orders include:

- Ending Radical And Wasteful Government DEI Programs And Preferencing – The White House
- Ending Illegal Discrimination And Restoring Merit-Based Opportunity – The White House
- Defending Women From Gender Ideology Extremism And Restoring Biological Truth To The Federal Government – The White House

While each of these Orders addresses distinct aspects of 'DEIA,' organizations should pay close attention to each of them. This document will unpack the three Orders, identifying what we know at this time, what we do not, and resources and guidance for implementing partners.

Note: While USAID's status as an agency independent of the Department of State is currently unclear, these Executive Orders apply across the entirety of the federal government. As a result, any organization receiving any form of USG funding should pay attention to the implications.

EO 14151: Ending Radical and Wasteful Government DEI Programs and Preferencing

What We Know

Thus far, this is the only executive order explicitly referenced by USAID in communications with their implementing partner community. In line with the contents of the Executive Order itself, USAID communicated the following to partners:

- All previously identified **DEIA awards** (those that focus principally on diversity, equity, inclusion, and accessibility) have been terminated and should not incur any additional costs.
- For all other ongoing awards, including contracts, grants, cooperative agreements, and others (including subcontracts and subawards) should ***immediately cease any DEIA activities.***
- Awards with such DEI activities will be **modified** or **terminated** in accordance with applicable terms and conditions.
- Partners should also send a certification to their Contracting or Agreement Officer (CO/AO) and the USAID Industry Liaison that all **DEIA-related activities** have completely ceased.

This message to implementing partners came in the wake of the Office of Personnel Management's (OPM) memo to all federal agencies to place all federally employed DEI staff on paid administrative leave on Wednesday, January 22nd. This is part of the Executive Order's direction to the Director of the Office of Management and Budget (OMB) to *"coordinate the termination of all" of the federal government's DEI "mandates, policies, programs, preferences, and activities. . . ."*

What is Still Unclear

The Executive Order and subsequent guidance from USAID do not clearly define or categorize DEIA activities. However, from the language used in the Executive Order itself and other Orders published, it can be inferred that the Trump Administration intends to take a wide view of what constitutes 'DEIA.' The Order, for example, directs the elimination of all *"DEI, DEIA"*, and *"environmental justice"* offices and positions (including but not limited to "Chief Diversity Officer" positions); all *"equity action plans," "equity"* actions, initiatives, or programs, *"equity-related"* grants or contracts; and all DEI or DEIA performance requirements for employees, contractors, or grantees."

Guidance and Resources

- Executive Orders Target DEI Programs and Gender Protections – Publications
- The Impact of Presidential Action on the Nonprofit Sector | Advisories | Arnold & Porter

EO 14170: Ending Illegal Discrimination and Restoring Merit-Based Opportunity

What We Know

Executive Order 14170 addresses both affirmative action and **DEI initiatives** in the federal government and among federal contractors and grant recipients. The Order revokes previous Executive Orders, such as EO 11246, Equal Employment Opportunity (September 24, 1965), which prohibited federal contractors from discriminating *"against any employee or applicant for employment because of race, creed, color, or national origin"* and required them to take affirmative action to prevent any such discrimination.

This new Executive Order effectively eliminates the requirements outlined in EO 11246 and will lead to new Federal Acquisition Regulation (FAR) rules and compliance requirements for federal contractors and grant recipients.

As also communicated in guidance relating to EO 14151, this Order requires contractors and grant recipients to "certify that [they do] not operate any programs promoting DEI that violate any applicable Federal anti-discrimination laws." As a result, organizations that currently maintain *"a DEI program should especially take note, as the EO directly links the maintenance of future DEI programs to False Claims Act (FCA) liability."*

Under this EO, if a contractor or grant recipient is found to have falsely certified that they do not operate programs promoting DEI, they could be the subject of an FCA claim, which carries the risk of criminal enforcement and debarment. ***Note: Contractors and recipients "may continue to comply with the regulatory scheme in effect on January 20, 2025" for 90 days from the EO, until April 22, 2025.***

In addition to direct consequences for federal contractors and grant recipients, this EO also **serves as a warning** to all organizations that operate DEI and affirmative action programs. While entities not receiving federal funds are not, currently, directly targeted by this EO, the Order does direct all federal agencies to submit a report identifying up to **nine potential civil compliance investigations of private sector companies,** including:

- Publicly traded corporations
- Large non-profit corporations or associations
- Foundations with assets of $500 million or more
- State and local bar and medical associations
- Institutions of higher education with endowments over $1 billion

This means that many of these entities could face consequences in the future for operating DEI and affirmative action programming.

What is Still Unclear

As with EO 14151, the exact definition of what constitutes 'DEI' programming is unclear. According to the EO itself, 'DEI' requirements and programming are characterized by *"immoral race- and sex-based preferences"* and employers are encouraged to promote *"individual initiative, excellence, and hard work."*

Guidance and Resources

- Analyzing President Trump's executive orders on DEI: Implications and reactions | Employment Law Watch
- Trump Executive Order targets private-sector DEI policies and practices
- How to Adjust Your DEI Initiatives Under Trump's New Guidelines
- Trump Administration to Impose False Claims Act Liability on Contractors and Grant Recipients Who Continue to Maintain DEI and Other Affirmative Action Programs | Insights | Venable LLP

EO 14168: Defending Women from Gender Ideology Extremism and Restoring Biological Truth to The Federal Government

What We Know

Although this EO does not explicitly target 'DEI' in its language, it sends a clear signal that programming promoting *'gender ideology'* is well within the scope of the Trump Administration's concept of 'DEIA' related work. According to this Order, 'gender ideology' **"replaces the biological category of sex with an ever-shifting concept of self-assessed gender identity, permitting the false claim that males can identify as and thus become women and vice versa, and requiring all institutions of society to regard this false claim as true. Gender ideology includes the idea that there is a vast spectrum of genders that are disconnected from one's sex. Gender ideology is internally inconsistent, in that it diminishes sex as an identifiable or useful category but nevertheless maintains that it is possible for a person to be born in the wrong sexed body."**

On January 29, 2025, the Office of Personnel Management released additional guidance on how the federal government plans to eradicate 'gender ideology.' This guidance includes the following actions:

- Send an email to all agency employees announcing that the agency will be complying with Defending Women and this guidance.
- Review all agency programs, contracts, and grants, and terminate any that promote or inculcate gender ideology.
- Review all agency position descriptions and send a notification to all employees whose position description involves inculcating or promoting gender ideology that they are being placed on paid administrative leave effective immediately as the agency takes steps to close/end all initiatives, offices, and programs that inculcate or promote gender ideology.
- Take down all outward-facing media (websites, social media accounts, etc.) that inculcate or promote gender ideology.
- Review agency email systems such as Outlook and turn off features that prompt users for their pronouns.
- Withdraw any final or pending documents, directives, orders, regulations, materials, forms, communications, statements, and plans that inculcate or promote gender ideology.
- Cancel any trainings that inculcate or promote gender ideology or have done so in the past.
- Disband or cancel any employee resource groups or special emphasis programs that inculcate or promote gender ideology or have done so in the past.

- Review all agency forms that require entry of an individual's sex and ensure that all list male or female only, and not gender identity. Remove requests for "gender" and substitute requests for "sex."
- Ensure that all applicable agency policies and documents, including forms, use the term "sex" and not "gender."
- Ensure that intimate spaces designated for women, girls, or females (or for men, boys, or males) are designated by biological sex and not gender identity.

In addition, a February 3 article from Devex reported on a USAID internal guidance it received. While the guidance recognized that 'women and girls' are the *"backbones of families, communities, and economies… In recent years, gender ideology has overshadowed and diluted [the US Government's] ability to advocate clearly and effectively for women and girls, obscuring biological realities and undermining the protections women and girls need."* Devex reported the following:

"The office wrote that USAID is committed to ensuring that its programs, policies, and messaging *'reflect biological truth.'* That means, starting immediately, there will be a review to eliminate USAID-funded initiatives, offices, and staff positions that the U.S. Office of Personnel Management would consider promoting or reflecting *'gender ideology.'* This includes reviewing and discontinuing awards, ensuring all forms and data-collection processes recognize only male and female pronouns, de-validating agency notices that *'inculcate or promote gender ideology,'* and removing language, training materials, and external materials that *'obscure this reality."*

Currently, this EO is only applicable to federal agencies and programming. This, of course, will impact many federal contractors and grant recipients who engage in programming that could be seen to promote 'gender ideology.' **US global health programming** will be particularly impacted as these programs serve members of the LGBTQ community, but other programming that has gender components may also be impacted.

What is Still Unclear

At this time, it is still unclear exactly how expansive the definition of 'gender ideology' will be when making decisions regarding programming. Still, any organization that runs programming **involving any form of gender-based targets, focus, or outreach** should pay close attention to the implementation of this EO.

Additionally, while this EO and subsequent guidance (e.g. providing gender-focused training, using the term 'gender' in policies and documents, etc.) does not currently apply to federal contractors and grant recipients, there may be subsequent expansions of the EO to encompass these groups.

Guidance and Resources

- Executive Orders Target DEI Programs and Gender Protections – Publications
- Overview of President Trump's Executive Actions on Global Health | KFF
- What Private Employers Should Know Following President Trump's Executive Order On Sex and Gender Identity | Crowell & Moring LLP
- Scoop: USAID tells staff 'gender ideology' dilutes female advocacy | Devex
- 2025.02.05 OPM Memo Re: DEIA Programs | Jason Workmaster
- Two new administrative actions that all nonprofits should know... | Diane Yentel

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