

News & Insights

Litigation Attorney Hillary Hurst for The Journal Record, How Trump's Executive Order Impacts DEI Policies

February 27, 2025

By: [Hillary N. Hurst](#)

The Journal Record

<https://journalrecord.com/2025/02/26/gavel-to-gavel-how-trumps-executive-order-impacts-dei-policies/>

On January 21, 2025, President Trump signed Executive Order 14173 ("EO"), entitled "Ending Illegal Discrimination and Restoring Merit-Based Opportunity." The stated purpose of the EO is to enforce existing civil rights laws by ending "illegal" Diversity, Equity, and Inclusion ("DEI") programs, including those in the private sector.

In particular, the EO has significant implications for federal contractors and grantees, as it increases the risk that federal contractors and grantees who maintain DEI programs may be subject to liability under the False Claims Act ("FCA"), 31 U.S.C. § 3729 *et seq.*

The FCA imposes liability on anyone who knowingly presents or causes to be presented to the government a false claim for payment or false statements that are material to the government's payment decision. A key aspect of the FCA is that it allows a private person, known as a "relator," to bring an action on the government's behalf in exchange for a share of the recovery if the suit is successful. Violating the FCA comes with significant consequences, including treble damages, costs and fees associated with the action, and the potential for a parallel criminal investigation.

FCA actions have become increasingly popular in recent years, and certain provisions of the EO may make it easier to establish an FCA violation. Specifically, the EO requires all federal contractors and grant recipients "to agree that its compliance in all respects with all applicable Federal anti-discrimination laws is material to the government's payment decisions for purposes" of the FCA. This provision lessens the likelihood that "materiality" will be a viable defense to an FCA claim, even though materiality is a "demanding" standard that requires consideration of numerous factors.

Notably, the EO does not overrule Title VII and does not purport to do so. Yet, the EO leaves many questions unanswered. Federal contractors, grantees, and the private sector should expect more guidance from the United States Department of Justice and may want to take steps to mitigate risk.

Litigation is underway, challenging the EO in the United States District Court for the District of Maryland on several bases. On Friday, February 21, 2025, the court issued a preliminary injunction related to certain provisions of the EO. Federal contractors, grantees, and those in the private sector who maintain DEI programs should carefully monitor the case moving forward and seek legal counsel.

Attorneys

- Hillary N. Hurst