

**Arnold & Porter**

## **DEI: Containing The Rapidly Developing Legal Risks**

**Addressing Risk, Regulatory Scrutiny, and Funding Implications**

On January 21, 2025, the White House issued Executive Order 14173, “Ending Illegal Discrimination and Restoring Merit-Based Opportunity.” The stated purpose of the executive order is to “combat illegal private-sector DEI preferences, mandates, policies, programs, and activities.” The order directs agency heads, with the Attorney General’s assistance, to eliminate DEI policies and develop plans for civil compliance investigations targeting certain corporations, nonprofits, and educational institutions.

The administration’s follow-up has been targeted and swift.

- On February 5, Attorney General Pam Bondi emphasized the prohibition of DEI policies under federal law and announced that the Department of Justice’s Civil Rights Division would utilize both civil and criminal enforcement tools against private sector entities and educational institutions that receive funding and do not comply with ending DEI policies.
- On February 12, the Federal Communications Commission launched an investigation of Comcast’s and NBCUniversal’s DEI practices.

More actions will inevitably follow. Public and private companies, nonprofits, universities and colleges, government contractors, any entity that receives government funding, and any company that has implemented a DEI policy — or even made public statements about its commitment to or embrace of DEI — must now assess their risks, compliance issues, and potential funding losses; prepare for potential regulatory scrutiny, civil or criminal investigations and enforcement proceedings, and litigation; and simultaneously manage their relationships with employees, shareholders, customers, and other stakeholders.

### **Implicated Industries**



**Major Corporations**

**Financial Institutions**

**Life Sciences & Healthcare**

**Nonprofits**

**Institutes of Higher Education**

**Government Contractors**

Arnold & Porter has organized an integrated, cross-practice response team, across the targeted industries, to advise clients on navigating this perplexing and rapidly changing environment and help you answer the key questions impacting your organization:

- What does the executive order mean in your industry?
- Which companies are likely targets?
- What will the investigations involve?
- What are the implications or potential outcomes?
- What should companies do right now?

The answers to these questions will vary depending on the industry and sector in which your organization operates, the federal agency that regulates your activity, and whether you receive federal funds.

- Government contractors face contracting and compliance risks as they assess potential conflicts between the executive order and existing contractual obligations. They risk disqualification from federal contracts or increased scrutiny in future bid evaluations, and potential False Claims Act exposure.
- Nonprofits, universities and colleges, healthcare and life science companies, and research organizations risk loss of federal status and critical funding.
- Communications, energy, and other companies in regulated industries face loss of licensure.
- All companies face not only the burden of a potential federal audit, but also the risk of private litigation from their own employees, students, customers, competitors, or other stakeholders, as well as the prospect of potential parallel investigations by authorities in various states.

Our clients are engaging us to help them examine and understand their own DEI policies and practices, understand the risks as federal agencies implement the executive order, and make intentional decisions about how to position the organization, how to proceed, and how to interact with the government. Because each industry faces unique issues and challenges, each client team is led by a highly experienced partner in that sector who has a deep understanding of both our clients' businesses and how the executive order is likely to affect their industry.

Please reach out to your Arnold & Porter relationship partner or one of our Executive Order Task Force leaders.



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