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# Blueprints for Evolving Compliance: Navigating DEI, FCA, OFCCP & Immigration Under the New Trump Administration

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# What You Will Learn

- ❑ The latest federal compliance changes impacting construction contractors with a particular focus on invigorated focus on immigration law compliance.
- ❑ How to navigate evolving federal expectations concerning DEI programs and policy, especially where federal expectations may differ from existing policies
- ❑ Strategies to minimize FCA-related risks in bids, certifications, and billing.
- ❑ What to expect from employment audits and how to stay audit-ready; and,
- ❑ Best practices for subcontractor compliance and workforce documentation.

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# The Regulatory Environment and Trump Administration Policies

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# Executive Order 14151, Ending Radical and Wasteful Government DEI Programs and Preferencing

OMB, AG and OPM “shall coordinate the termination of all discriminatory programs, including illegal DEI and ‘diversity, equity, inclusion, and accessibility’ (DEIA) mandates, policies, programs, preferences, and activities in the Federal Government, under whatever name they appear “

# Executive Order 14151

Revocation of Biden Executive Order 13985 and follow-on orders

OPM **now** required to review and revise all existing Federal Employment practices, union contracts, training policies or programs to comply with EO

Federal employee practices shall reward individual initiative, skills, performance, and hard work and shall not under any circumstances consider DEI or DEIA factors, goals, policies, mandates, or requirements

Each agency, department or commission head required to terminate, to the maximum extent allowed by law, all DEI, DEIA and ‘environmental justice” offices and positions, equity action plans, equity actions, initiatives or programs, equity related grants or contracts and all DEI and DEIA performance requirements for employees, contractors, grantees

Inform President and advisors- meet monthly on the economic and social costs of DEI, DEIA, and “environmental justice” in agency or department programs, activities, policies, regulations, guidance, employment practices, enforcement activities, contracts(including set-asides), grants, consent orders, and litigating positions

# Executive Order 14173, Ending illegal Discrimination and Restoring Merit-Based Opportunity

It is the policy of the United States to protect the civil rights of all Americans and to promote individual initiative, excellence, and hard work. I therefore order all executive departments and agencies (agencies) to terminate all discriminatory and illegal preferences, mandates, policies, programs, activities, guidance, regulations, enforcement actions, consent orders, and requirements. I further order all agencies to enforce our longstanding civil-rights laws and to combat illegal private-sector DEI preferences, mandates, policies, programs, and activities.

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# Executive Order 14173

Revocation of affirmative action mandates: EO 14173 invalidates Executive Order 11246 and related DEI/affirmative action requirements, including OFCCP enforcement obligations

Mandatory contract clauses and certifications

**Contractors/subcontractors must certify they do not run DEI programs that violate federal anti-discrimination laws.**

They must acknowledge compliance with anti-discrimination laws is material to government payment decisions—making the certification subject to enforcement under the False Claims Act (FCA) and the AFCA

FCA/AFCA liability implications: False certifications or knowingly operating illegal DEI programs expose organizations to civil and criminal penalties—including whistleblower lawsuits (qui tam actions)

# Executive Order 14173

…(ii) Excise references to DEI and DEIA principles**, under whatever name they may appear**, from Federal acquisition, contracting, grants, and financial assistance procedures to streamline those procedures, improve speed and efficiency, lower costs, and comply with civil-rights laws; and

(iii) Terminate all “diversity,” “equity,” “equitable decision-making,” “equitable deployment of financial and technical assistance,” “advancing equity,” and like mandates, requirements, programs, or activities, as appropriate.

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# Civil Rights Fraud Initiative and FCA/AFCA

The Blanche Memorandum

Implications for Contractors

“[t]he False Claims Act is also implicated whenever federal-funding recipients or contractors certify compliance with civil rights laws while knowingly engaging in racist preferences, mandates, policies, programs, and activities, including through diversity, equity, and inclusion (DEI) programs that assign benefits or burdens on race, ethnicity, or national origin. While racial discrimination has always been illegal, the prohibition on such policies became clear after the Supreme Court stated that "[e]liminating racial discrimination means eliminating all of it."

# Contractor Certification

Executive Order 14173

- (A) A term requiring the contractual counterparty or grant recipient 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 section 3729(b)(4) of title 31, United States Code; and
- (B) A term requiring such counterparty or recipient to certify that it does not operate any programs promoting DEI that violate any applicable Federal anti-discrimination laws.

# Diversity, Equity and Inclusion

## Assessing, Aligning and Maintaining Your Internal DEI Practices with Federal Priorities

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# Diversity Policies and Programs Under the Blanche Memo

- Expressed view that public and private programs premised on ”invidious” characteristics violate federal Civil Rights Laws

- Focuses on federal non-discrimination laws based on race, color, religion, sex, or national origin by eliminating reliance upon “unlawful, unfair, and unsafe discriminatory practices, including those labeled as Diversity, Equity, and Inclusion (DEI), and revokes executive orders that implemented or encouraged the adoption of such unlawful practices.”

# AG Guidance

July 29, 2025, Attorney General Pam Bondi, Guidance For Recipients of Federal Funding Regarding Unlawful Discrimination

"Clarifies the application of federal antidiscrimination laws to programs or initiatives that may involve discriminatory practices, including those labeled as Diversity, Equity and Inclusion."

Programs/Policies must not discriminate on the "basis of race, color, national origin, sex, religion, or other protected characteristics-no matter the program's labels, objectives, or intentions."

Defines **"unlawful proxy discrimination,"** as using facially neutral criteria (e.g. "cultural competence," "lived experience" or geographic targeting) as proxies for protected characteristics which if designed or applied with the intention of advantaging or disadvantaging individual based on protected characteristics

Overcoming Obstacles" Narratives or "Diversity Statements": A federally funded program requires applicants to describe "obstacles they have overcome" or submit a "diversity statement" in a manner that advantages those who discuss experiences intrinsically tied to protected characteristics, using the narrative as proxy for advantaging that protected characteristic in providing benefits

# Protecting DEI and Compliance Programs in the Face of the Administration's Pronouncements

- Presumes the law is settled and in agreement with the Administration's position
- Presumes DEI Programs lack any merit component

# Employment Practices and EEOC

What to Expect from Employment Audits and How to Stay Audit-Ready

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# EEOC Acting Chair Andrea Lucas

“Far too many employers defend certain types of race or sex preferences as good, provided they are motivated by business interests in ‘diversity, equity, or inclusion. ’But no matter an employer’s motive, there is no ‘good,’ or even acceptable, race or sex discrimination,” said. “In the words of Justice Clarence Thomas in his concurrence in *Students for Fair Admissions*, ‘two discriminatory wrongs cannot make a right.’”

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# OFCCP Is No More

- The FY 2026 Budget proposed to eliminate OFCCP
- Based on EO 14173 and the rescission of EO 11246 the primary basis for OFCCP's enforcement authority and program work was removed
- Transfers enforcement of the Vietnam Era Veterans' Readjustment Assistance Act to VETS, and enforcement of Section 503 of the Rehabilitation Act of 1973 to EEOC.

# What Is Considered Unlawful Under the Bondi Memo?

## Employment Practices

- Focuses on the elimination of regulations imposed on federal contractors that use placement goals based upon race or sex (EO 14173) in recruitment and employment decision.
- Seeks to eliminate DEI “unlawful discrimination.”
- DEI Training programs are unlawful if they “stereotype, exclude, or disadvantage individuals based on protected characteristics or create a hostile environment.” Such an “objectively hostile environment,” may be created “through severe or pervasive use of presentations, videos, or other workplace training materials that single out, demean, or stereotype individuals based on protected characteristics.”

# What Practices are Considered Illegal Under the Bondi Memo?

## Employee Related

- **Hiring/Promotion Quotas or Preferences**
- **"Diverse Slate" Requirements**
- **Exclusive Programs**
- **Segregated Employee Resource Groups**
- **DEI Training that Stereotypes**
- **Performance Metrics Tied to Diversity Goals**
- **Stereotyping or Assigning Collective Guilt**
- **Segregated Training**
- **Coerced Adoption of Ideology**
- **Reverse Discrimination**

## Contracting

- **Supplier Diversity Initiatives with Quota**

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# Examples of Unlawful Practices Under the Bondi Memo

- Preferential hiring or promotion practices that prioritizes candidates from “underrepresented groups” based on a protected characteristic to the disadvantage of a qualified candidate that does not belong to the group.

- Hosting race-based DEI training which separates groups based on protected characteristics while excluding individuals who do not share the characteristic from participating.

- Unlawful use of protected characteristics occurs when a federally funded entity or program considers race, sex, or any other protected trait as a basis for selecting candidates for employment (e.g., hiring, promotions), contracts (e.g., vendor agreements), or program participation (e.g., internships, admissions, scholarships, training).

# Examples of Lawful Practices Under the Bondi Memo

- Broad Recruitment and Outreach
- Neutral Anti-Discrimination Training
- Non-Discriminatory Employee Resource Groups
- Reviewing Policies for Unconscious Bias
- Affirmative Action for Protected Groups

# “DBE” Programs and the Trump Administration

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# DBE Program

The DBE Interim Final Rule
Effective October 3, 2025

- Made changes to the DBE/ACDBE Program Regulations, 49 CFR Parts 23 and 26

- Eliminated the race-based and sex-based rebuttable presumption of social disadvantage upon equal protection grounds

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# New Definition of Social and Economic Disadvantage

26.67 Social and economic disadvantage.

- (a) Non-presumptive Disadvantage. All applicants must demonstrate social and economic disadvantage (SED) affirmatively based on their own experiences and circumstances within American society, and without regard to race or sex.
- (1) To satisfy the SED requirement and ensure all determinations of disadvantage are not based in whole or in part on race or sex, an owner must provide the certifier a Personal Narrative (PN) that establishes the ***existence of disadvantage by a preponderance of the evidence based on individualized proof regarding specific instances of economic hardship, systemic barriers, and denied opportunities that impeded the owner's progress or success in education, employment, or business, including obtaining financing on terms available to similarly situated, non-disadvantaged persons.***
- (2) The PN must state how and to what extent the impediments caused the owner economic harm, including a full description of type and magnitude, and must establish the owner is economically disadvantaged in fact relative to similarly situated non-disadvantaged individuals.
- (3) The owner must attach to the PN a current PNW statement and any other financial information he considers relevant.

# Impact of the Rule Change

- DBE Firms
- Recipients of Federal Funds
- Unified Certification Programs

- All DBEs are pending re-certification
- DBE goal counting and reporting are suspended pending re-certification
- No DBE goals are to be set on new projects pending re-certification
- Unified Certification Programs (UCPs) must re-certify DBEs based on new certification standards (Submission of PN and PNW Statement)
- Once re complete, re-assess overall and contract DBE goals based on new pool of DBEs

# Discussion of DBE Program Future

- Mamco
- Consent Order
- Re-Authorization of Program in Transportation Bill

- MAMCO Legal Case
- Consent Order
- DBE FAQs
- Re-Authorization of Program in Transportation Bill
  - State Actions
  - M/WBE and SDVOB Programs Viability

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# Immigration Law Compliance

## A Reinvigorated Focus on Enforcement

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# IRCA

## Change in Enforcement Priorities

- Construction Industry Worksite Enforcement
- Requirements of the IRCA
- Compliance Timeline
  - Request for Inspection
  - Raids to Investigate I-9 Compliance
  - Reliance on E-Verify
- Immigration (Section 1) v. Discrimination (Section 2) as a Policy

# Strategies to Minimize FCA-related risks in Bids, Certifications and Billing

A discussion

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# Strategies to Minimize Risks

| Action Step | Description |
| --- | --- |
| 1. Conduct privileged DEI audit | 1. Identify potentially unlawful preferences in existing programs |
| 2. Revise policies | 2. Eliminate quotas or preferences, keep lawful inclusive efforts |
| 3. Document thoroughly | 3. Retain audit materials, legal opinions, policy updates |
| 4. Review contract clauses | 4. Ensure accurate certification and awareness of FCA materiality |
| 5. Train internal teams | 5. HR, legal, leadership staff on new compliance standards |
| 6. Monitor enforcement developments | 6. Adapt promptly to new guidance or legal rulings |
| 7. Promote merit-based operations | 7. Foster inclusive culture without discriminatory mechanisms |

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