

## insights

**TYPES NOT MAPPED YET** January 24, 2025 | TTR not mapped yet | Tres Cleveland, Stephanie C. Fredman, Scott Z. Goldschmidt, Aaron D. Lacey, Leah Northener

# President Trump's Executive Order Banning Illegal DEI Policies: What Does It Mean for Higher Education?

On January 21, 2025, President Trump issued an Executive Order aimed at eliminating “illegal” diversity, equity, and inclusion policies and protecting all Americans from discrimination based on race, color, religion, sex, or national origin. The Executive Order notes specifically that “institutions of higher education have adopted and actively use dangerous, demeaning, and immoral race- and sex-based preferences under the guise of so-called “diversity, equity, and inclusion” (DEI) or ‘diversity, equity, inclusion, and accessibility’ (DEIA) that can violate the civil-rights laws of this Nation.”

This Executive Order presents a substantial change for institutions of higher education and institutions should continue to monitor guidance while also collaborating with outside legal counsel for specific advice. Below are general guidelines of how the Order affects institutions of higher education:

### 1. Private-sector institutions of higher education:

The Order seeks to limit “illegal” private-sector DEI policies and practices. The Order requires that the heads of all agencies, with the assistance of the Attorney General, shall identify nine companies to perform “compliance investigations” into the companies’ DEI practices and programs. Institutions of higher education with endowments over 1 billion dollars could be included as part of the nine companies.

It remains unclear whether the Trump Administration will be able, within the private-sector, to enforce its prohibition on the type of “illegal discrimination” outlined in the Order, or issue any type of sanctions for private-sector institutions of higher education (not receiving Federal grants or Title IV funds) that do not comply with the Order. This said, understanding all DEI programs that exist on campus and determining whether they are consistent with the Order is an important step institutions may wish to take. Further,, institutions of higher education with endowments over 1 billion dollars may wish to consider taking additional steps to prepare for a potential compliance investigation. These steps may include:

- Consider your institution’s use of DEI programs in hiring, scholarships, internships, and other programs.
- Assess whether any program uses quotas or is directed toward any specific race, sex, religion, or national origin.
- Assess whether the company provides benefits to individuals of a specific race, sex, religion, or national origin.
- Determine whether any specific DEI programs are created specifically to “balance” the workforce or student body.
- Document all changes that have been made to DEI programs since the issuance of the January 22, 2025 Order.
- Document any complaints made by students or employees regarding any DEI programs on campus and the institution’s response to the complaint.

### 2. Public institutions of higher education:

The Order does not specifically address DEI programs and practices at public institutions. Public institutions must comply with Title VI and VII of the Civil Rights Act of 1965 and the Equal Protection Clause of the 14<sup>th</sup> Amendment. Further, consistent with the *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College* Supreme Court decision, public institutions in Republic-led states may see further action on the state level to limit certain DEI programs and practices.

While public institutions of higher education may not be subject to a compliance investigation as outlined in the Order, they should also consider the following:

- Whether student and employee policies comply with the anti-discrimination provisions in Title VI, Title VII, and the Equal Protection Clause.
- Whether trainings on campus comply with the anti-discrimination provisions in Title VI, Title VII, and the Equal Protection Clause.

Whether their campus has a DEI office or officers, and if so, whether adjustments may need to be made to the role of the DEI office or officers.

- Policies and practices around speech on campuses regarding First Amendment-protected speech, as the Order specifically states that it does not prevent institutions of higher education from engaging in First Amendment-protected speech.

### 3. All institutions of higher education:

We offer the following action items, which all institutions of higher education may wish to consider:

- Review all anti-discrimination policies and trainings and ensure they are in compliance with Title VI and its prohibition on discrimination based on race, color, and national origin and Title VII and its prohibition on discrimination based on a protected category in employment.
  - It is anticipated that there will be an increase in claims filed under Title VI at both public and private institutions of higher education.
  - Title VI also prohibits discrimination against those who are perceived to be Jewish, Christian, Muslim, Sikh, Hindu, Buddhist, or another religious group based on the group's shared ancestry or ethnic characteristics.
  - The Order does not change the prohibition against discrimination in employment practices based on race, sex, religion, and national origin.
- Consider whether trainings on anti-discrimination policies and practices should be modified to conform with Title VI and VII.
- Consider whether policies are needed to address situations where faculty publicly make statements about DEI programs. The Order specifically does not prohibit a person teaching at a Federally-funded institution of higher education from advocating for DEI programs that are prohibited by the Order during the course of academic instruction.
- Consider whether admissions policies and practices are race-neutral.
  - In *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, the Supreme Court held that the use of race-conscious admissions practices at public institutions of higher education was prohibited as the practice violated the Equal Protection Clause of the 14<sup>th</sup> Amendment. Further, in a concurring opinion, Justice Gorsuch reasoned that race-conscious admissions policies would also violate Title VI of the Civil Rights Act of 1965, which would apply to all institutions of higher education.
  - The Order specifically notes that further guidance on the "measures and practices required to comply with *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, 600 U.S. 181 (2023)" will be provided to all institutions of higher education that receive Federal grants or receive Title IV funds.

### 4. Institutions of higher education who contract with the Federal government:

Finally, many institutions of higher education contract with the Federal government. Government contracts are complex, and institutions should specifically confer with experienced counsel when reviewing their contracts. The Order generally addresses Federal Contractors in the following ways:

- The Order revoked Executive Order 11246 of September 24, 1965, which prohibited discrimination by government contractors and subcontractors.
- The Order also instructed the Department of Labor to cease "[a]llowing or encouraging Federal Contractors and subcontractors to engage in workforce balancing based on race, color, sex, sexual preference, religion, or national origin."

As a result, institutions of higher education who contract with the Federal government should consider:

- Whether quotas in hiring are used in order to create diversity within the workforce.
- Whether policies addressing DEI and non-discrimination in the workforce address providing any benefit or preference to a certain race for hiring or promotions.
- Whether any current policies or practices provide a benefit to any specific race, sex, religion, or national origin, and not to another.

Thompson Coburn has previously explored topics around DEI, Title VI, and Title VII in its webinars and blog posts.

- [Affirmative Action in Higher Education: Impact of SFFA v. Harvard and SFFA v. UNC | Thompson Coburn LLP](#)
- [Examining Title VI Compliance for Institutions of Higher Education | Thompson Coburn LLP](#)

Institutions that would like assistance with Title VI, Title VII, and DEI compliance are welcome to contact Tres Cleveland ([tcleveland@thompsoncoburn.com](mailto:tcleveland@thompsoncoburn.com)), Scott Goldschmidt ([sgoldschmidt@thompsoncoburn.com](mailto:sgoldschmidt@thompsoncoburn.com)), Stephanie Fredman ([sfredman@thompsoncoburn.com](mailto:sfredman@thompsoncoburn.com)), and Leah Northener ([lnorthener@thompsoncoburn.com](mailto:lnorthener@thompsoncoburn.com)). We also invite institutions to visit our [Higher Education Resources page](#), which includes links to our most recent webinars, training series, desk guides, whitepapers, and blog posts.

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Our goal is to serve as a practical, concise, and accessible resource for institutions confronting regulatory and policy issues. The blog focuses on the extraordinarily broad and sophisticated set of legal challenges faced by contemporary post-secondary institutions, including those involving real estate, construction, joint ventures, litigation, intellectual property, immigration, taxation, financing, employees and benefits, and government relations, to name a few. We also cover the staggering collection of federal, state, and accrediting agency laws and standards specific to higher education.

If there are topics you would like us to cover, or questions you may have regarding a topic that already has been addressed, please do not hesitate to reach out. Finally, if you would like to contribute a guest article, we would love to hear from you.

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