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## **Trump's Federal Contracting Executive Order Seeks To Impose False Claims Act Liability On Contractors Promoting "Illegal" DEI Programs**

On January 20, 2025 President Trump signed an Executive Order entitled "Ending Illegal Discrimination and Restoring Merit-Based Opportunity," targeting what the administration considers illegal diversity, equity and inclusion, or "DEI," efforts undertaken by federal contractors. The Order rescinds longstanding affirmative action and anti-discrimination requirements for federal contractors that had been in place since the Lyndon B. Johnson administration. Instead, the Order directs federal contracting officials to immediately cease "promoting diversity," requiring contractors to take "affirmative action" and allowing or encouraging federal contractors to engage in "workplace balancing" based on race, color, sex, sexual preference, religion, or national origin. This is a major policy reversal, although many employers had already begun scaling back affirmative action programs after the Supreme Court's decision last year in [Students for Fair Admissions v. Harvard](#).

But potentially more impactful is that the new Executive Order purports to impose liability under the False Claims Act ("FCA") on federal contractors who operate DEI programs that the administration deems "illegal" in violation of federal anti-discrimination laws. The FCA is an anti-fraud statute aimed at protecting the federal government from fraudulent payment claims if there is material noncompliance with statutory, regulatory, or contractual requirements. Its penalties are significant: if found liable, damages are three times the government's damages, plus a penalty. What's more, the FCA allows private whistleblowers to initiate suits in the name of the government, and potentially share in the government's recovery, proving a strong incentive for individuals to bring such suits.

The Executive Order imports the threat of FCA liability into the DEI debate. The Order requires federal contractors to agree that compliance with federal anti-discrimination law is material to the contract—materiality to payment is one of the requirements for FCA liability. The Order further requires federal contractors to certify that they are not operating any DEI program that violates federal law—false certification of compliance is a basis on which a contractor can be liable for supposedly defrauding the government. Taken together, the Order's requirements raise the prospect that federal contractors could face FCA scrutiny for DEI programs that violate federal anti-discrimination law.

To be sure, the Order does not purport to alter any of the substantive law around affirmative action or anti-discrimination law. That is to say, DEI programs that are lawful under existing law remain so and would be outside the scope of any FCA liability—although the Trump Administration will likely take a more aggressive view on the legality of DEI programs under existing law. And contractors should also keep in mind that rolling back DEI initiatives too far could increase the risk of "traditional" discrimination claims—indeed, the Order may well subject contractors to FCA liability for programs and practices that discriminate on traditional lines, too. But this Order is a clear signal that the new administration intends to investigate DEI programs in the private sector, with more action likely to come.

To read the full text of President Trump's executive order, please click [here](#).

If you have questions concerning the contents of this alert, or would like more information, please speak to your regular contact at Weil or to any of the following:

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