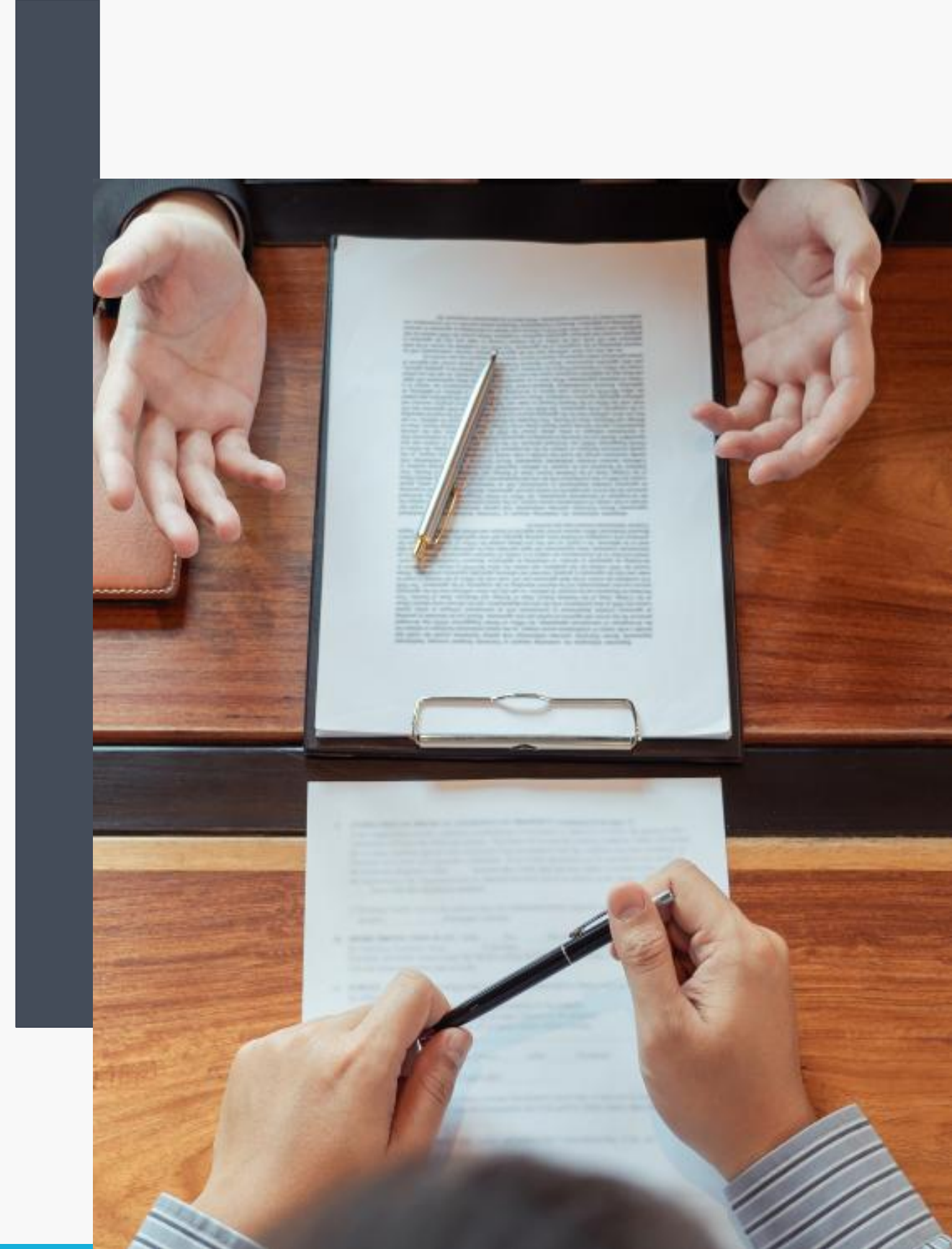


**April 13, 2026**

# **Understanding the New Executive Order on DEI and Its Impact on Federal Contractors**

Presenters:

Beth Ronnenburg, SPHR, SHRM-SCP  
& Vicki Lipnic, Esq.



# Today's Speakers



**Beth Ronnenburg, SPHR, SHRM-SCP**



**Vicki Lipnic, Esq.**



# Introduction

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# Agenda

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- Background, Context and Purpose
- Definitions and Scope
- Requirements for Federal Contractors
- Reporting Expectations and Enforcement
- False Claims Act and High-Risk Activities
- What to Expect from the Government Going Forward
- What Contractors Should Do Now



# Background and Context

- New [Executive Order 14398](#) signed March 26, 2026 (including [Fact Sheet](#))
- Focus: Race/ethnicity-based DEI practices among federal contractors
- Signals increased federal scrutiny of DEI programs



# Purpose of the EO

- Eliminate “racially discriminatory DEI practices”
- Emphasis on merit-based outcomes
- Focus is race/ethnicity discrimination (not all protected classes)

## Key quotes in the EO:

“... some entities continue to engage in DEI activities and often attempt to conceal their efforts to do so.”

“DEI activities also create unnecessary costs by reducing the pool of available labor by artificially limiting companies to hiring or promoting certain individuals, suppliers, or intermediaries based on their race or ethnicity.”



# Definitions

- Section 2. Definitions:
  - a) For the purpose of this order, “racially discriminatory DEI activities” means disparate treatment based on race or ethnicity in the recruitment, employment (e.g., hiring, promotions), contracting (e.g., vendor agreement), program participation, or allocation or deployment of an entity’s resources.”
  - b) “Program participation” means membership or participation in, or access or admission to: training, mentoring, or leadership development programs; educational opportunities; clubs; associations; or similar opportunities that are established by the contractor or subcontractor.”



# Scope of Applicability

- Prime contractors
- Subcontractors
- Extended supply chain impact



# Requirements for Federal Contractors

- Section 3. By April 25, 2026, “. . . executive departments and agencies, including independent establishments subject to FPASA, 40 U.S.C. 102(4)(A) (agencies) shall, to the extent permitted by law, ensure that contracts and contract-like instruments, including contractors’ subcontracts and subcontractors’ lower-tier subcontracts, include the following clause:

“In connection with the performance of the work under this contract, [the contractor/appropriate party (contractor)] agrees as follows:



# Requirements for Federal Contractors

1. The contractor will not engage in any racially discriminatory DEI activities, as defined in section 2 of the Executive Order of March 26, 2026 (addressing DEI Discrimination by Federal Contractors);
2. The contractor will furnish all information and reports, including providing access to books, records, and accounts, as required by the contracting agency pursuant to the Executive Order of March 26, 2026 (Addressing DEI Discrimination by Federal Contractors), for purposes of ascertaining compliance with this clause;
3. In the event of the contractor's or a subcontractor's noncompliance with this clause, this contract may be canceled, terminated, or suspended in whole or in part, and the contractor or subcontractor may be declared ineligible for further Government contracts;



# Requirements for Federal Contractors

4. The contractor will report any subcontractor's known or reasonably knowable conduct that may violate this clause to the contracting department or agency and take any appropriate remedial actions directed by the contracting department or agency;
5. The contractor will inform the contracting department or agency if a subcontractor sues the contractor and the suit puts at issue, in any way, the validity of this clause; and
6. The contractor recognizes that compliance with the requirements of this clause are material to the Government's payment decisions for purposes of section 3729(b)(4) of title 31, United States Code (False Claims Act)."



# Reporting Expectations and Enforcement

## Reporting Expectations

- Increased reporting requirements
- Data transparency
- Agency oversight

## Enforcement

- Contract termination risk
- Suspension/debarment
  - Coordinated enforcement by DOJ, EEOC and contracting agency
- Increased audits



# False Claims Act Risk

- DOJ enforcement
  - 4/10/2026 DOJ under Civil Rights Fraud Initiative settles with IBM related to DEI (<https://www.justice.gov/opa/pr/ibm-pays-17-million-resolve-allegations-discrimination-through-illegal-dei-practices>)
- Certification liability
- Potential penalties
- Whistleblower exposure



# High-Risk Activities

- Recruitment
- Employment (e.g., hiring or promotions)
- Contracting
- Program participation
  - “ . . . membership or participation in, or access or admission to: training, mentoring, or leadership development programs; educational opportunities; clubs; associations; or similar opportunities that are established by the contractor or subcontractor.”
- “. . . or allocation or deployment of an entity’s resources.”



# What to Expect from the Government Going Forward

- By April 25, 2026 – executive departments and agencies shall, to the extent permitted by law, ensure that contracts and contract-like instruments, including contractors' subcontracts and subcontractors' lower-tier subcontracts, include the EO 14398 clause
- By May 25, 2026 – The FAR Council will issue interim guidance regarding agency implementation of the EO 14398 clause
- Director of OMB, in coordination with the Attorney General, Assistant to the President for Domestic Policy, and Chairman of the EEOC will identify sectors that pose a particular risk of entities engaging in discriminatory DEI
- By July 25, 2026 – Each agency head shall review the agency's implementation of the EO 14398 clause and report to the Assistant to the President for Domestic Policy regarding its compliance with that section



# What Contractors Should Do Now

- Coordinate with procurement (internal and at subs) to ensure contracts are being updated
- Conduct audits
- Review policies
- Engage experts
- Continue data collection
- Analyze disparities



# Questions?

**For more information about any of the updates covered in this presentation, please contact us!**



[bai@berkshireassociates.com](mailto:bai@berkshireassociates.com)



800-882-8904



[www.berkshireassociates.com](http://www.berkshireassociates.com)