

# DEIA Executive Orders and the Consequences for Educational

Nicholas J. Stock II and Alexis D Behnke (Summer Associate)

*JD Supra*

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On January 21, 2025, President Trump issued **Executive Order 14173: Ending Illegal Discrimination and Restoring Merit-Based Opportunities (EO 14173)**. EO 14173 aims to eliminate Diversity, Equity, and Inclusion (**DEI**) and Diversity, Equity, Inclusion, and Accessibility (**DEIA**) mandates, policies, programs, preferences, and activities within the federal government, contractors, and grantees.

This update follows our previous analysis of recent executive orders.

## ***In case you missed it:***

On Friday, June 27, James Ryan, President of the University of Virginia (UVA) since 2018, announced his resignation amid pressure from the Trump Administration concerning Ryans support for DEI programs and policies at the school.[i] The Universitys Board of Visitors voted in March to end all DEI programs to comply with EO 14173. However, Ryan reportedly resigned to resolve an investigation into the schools DEI initiatives. The attention on UVA signals a shift beyond private Ivy League schools towards public institutions.

On July 2, 2025, to resolve a civil rights investigation stemming from Executive Order 14168,[ii] a different DEI-targeted executive order related to biological males in female sports, the University of Pennsylvania (UPenn) revoked three school records that had been awarded to Lia Thomas, a transgender swimmer who has been the center of much controversy.[iii] UPenns President also apologized to female athletes who had been disadvantaged by Thomass participation.

Two major cases involving executive orders continue to develop:

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## **AUTHORS/ CONTRIBUTORS**

Nicholas J. Stock II

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- In *NADOHE v. Trump*, plaintiffs challenged Executive Orders 14151 and 14173, arguing they are unconstitutionally vague and overly broad.[iv] Plaintiffs claimed that the EOs gave federal agencies unchecked discretion to revoke funding without clear standards, threatening research and DEIA-related programs.[v] After the Office of Management and Budget issued a funding freeze on January 27, 2025, the plaintiffs sought immediate injunctive relief, arguing violations of the Spending Clause, Due Process, the Separation of Powers, and the First Amendment. On March 10, 2025, a preliminary injunction barred the government from enforcing the orders termination and certification provisions. However, four days later, the Fourth Circuit lifted the injunction, allowing enforcement to proceed during litigation. The court emphasized that its ruling was procedural and not final. The case remains ongoing.
- In *Chicago Women in Trades v. Trump*, plaintiff similarly argued that Executive Orders 14151 and 14173 violated the First and Fifth Amendments, the Separation of Powers, and the Spending Clause.[vi] The court granted a temporary restraining order on March 27, 2025, followed by a partial preliminary injunction on April 14, blocking enforcement of the termination and certification provisions with respect to one of the plaintiffs grants.[vii] On May 7, the court declined to extend the injunction to all the plaintiffs federal grants, finding no clear legal error. This case is also ongoing.
- Other courts have issued restraining orders.

These controversies coincide with a broad effort by the Trump Administration to deliver on a central campaign promise of ending DEI policies within government, federal contractors and grant recipients, educational institutions and tax-exempt organizations, and the public sector.

## Background

In 2023, the US Supreme Court held that race-based affirmative action programs in the college admission process violated the Equal Protection Clause of the 14<sup>th</sup> Amendment. *Students for Fair Admission, Inc. v. President and Fellows of Harvard College*, 600 U.S. 181 (2023).[viii] In other words, the Court held that race-based admissions processes are unconstitutional.[ix]

EO 14173 follows the courts holding in *Students for Fair Admissions* and goes further. EO 14173 states that using race, gender, or other protected characteristics as a motivating or determining factor in any educational, employment, scholarship, or grant opportunity violates federal law. In short, EO 14173 considers the recent practices of many educational institutions and related organizations illegal.

Earlier this year the US Attorney General set a deadline of May 21, 2025, for the Civil Rights Division and Office of Legal Policy to jointly file a report to the Associate AG regarding illegal DEI and DEIA discrimination and preferences in the private sector, including investigation and enforcement strategies and priorities. Some organizations action plans assumed that report would provide clarity, but that report has not been published and may not be made public. We know from the language of the EOs and the pattern of high-profile investigations that investigation priorities target larger organizations and recipients, starting with public companies, larger institutions (endowments over \$1 billion), and professional associations.

There has been no further guidance from the Attorney General about interpreting EO 14173 or on the specific recommendations made by the Attorney General's office concerning investigation or enforcement priorities. The information that is currently available to colleges, universities, and foundations is limited, has met challenges, and still includes questions that beg to be clarified. For starters, the term DEI itself has not yet been formally defined. Still, EO 14173 has not been held unconstitutional, and private and public universities are making major changes.[x] Foundations, colleges, universities, and other government-funded entities must apply the scarce guidance regarding EO 14173 available with all due care.

### **What does EO 14173 do?**

- **Prohibit Federally Funded DEI and DEIA Programs.** EO 14173 prohibits the use of protected characteristics as motivating factors in admissions, scholarship awards, or other educational opportunities for federal agencies, contractors, and grantees. EO 14173 does not affect consideration for individuals and classes protected by law on the basis of characteristics that are not considered illegally discriminatory (*g.*, disabled persons, veterans).
- **Prohibit Consideration of Race.**
  - **Merit-Based Programs.** EO 14173 emphasizes the importance of merit-based practices that focus on individual aptitude and calls for the elimination of hiring that prioritizes demographic characteristics.
  - **Need-Based Programs.** Policies and programs that consider need-based factors such as socioeconomic status regardless of racial characteristics do not distinguish based on prohibited characteristics and are generally not prohibited under current law.
- **Prompt Review of Existing Programs.** All existing programs should be reviewed to determine whether they contain DEI-related components that may conflict with EO 14173. All executive departments and agencies are required to identify and revoke any existing policies that violate EO 14173.

### **Implications for Colleges, Universities, and Related Organizations**

Universities, colleges, grant recipients and related organizations that receive federal funding, whether directly or through indirect funding for scholarships for educational purposes, must understand EO 14173 and its reading of *Students for Fair Admissions*.

Educational institutions must:

- Ensure that admission decisions do not consider race, gender, or other historically protected characteristics.
- Evaluate any programs, policies, gift agreements, or initiatives that consider race, gender, ethnicity, nationality, sexual orientation, or other designated traits in the decision-making process.
- Scrutinize the use of disfavored terms and trigger words like DEI, DEIA, unrepresented, racial terms, etc. in private and public documents and communications.
- Consider whether programs align with current federal directives and anticipate government scrutiny.

### **Implications for Recipients, Foundations, Scholarship Funds**

To avoid challenges or scrutiny, foundations and other entities receiving or offering scholarship funds to students should reject all race or gender-based restrictions, especially if they are a federal contractor or benefit from federal funding. Entities that provide scholarships should consider the following steps to comply with EO 14173.

- Review activities, correspondence, procedures, and eligibility regarding DEI to evaluate if they comply with existing anti-discrimination laws and institutional goals and purposes.
- Consider eliminating any diversity statements or similar requirements in scholarship eligibility criteria.
- Commit to making scholarship awards and other scholarship-related decisions based solely on merit or socioeconomic need, without consideration of race, ethnicity, religion, gender, or other historically protected class or characteristics.
- Ensure that policies, programs, and activities are consistent with the organizations exempt purpose and that the exempt purpose is permissible under current law and interpretive authority.

EO 14173 presents questions for organizations that have historically operated DEI programs. Colleges, universities, related organizations, and their directors and officers must be proactive in understanding the law, evaluating risk tolerance, and documenting compliance measures through appropriate communications, policies, and corporate governance.

If your organization has questions about Executive Orders affecting schools or scholarship organizations, or responding to a notice, investigation, or other development, please contact the author, Nick Stock (NStock@FosterSwift.com), or your Foster Swift business and tax lawyer.

Nick Stock thanks Alexis Behnke for her contributions to this article.

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[i] Long, Katherine. "UVA President Resigns amid Pressure from Trump Administration". *Politico*. Accessed June 30, 2025. Michael S. Schmidt & Michael C. Bender. "University of Virginia President Resigns Under Pressure From Trump Administration". *The New York Times*. ISSN 0362-4331. Accessed July 1, 2025.

[ii] Executive Order 14168 - Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government states that the federal government will only recognize two sexes male and female based on an individuals immutable biological classification, and orders federal agencies to enforce laws such as Title IX in accordance with this definition.

[iii] Binkley, Collin. UPenn revokes swimming records set by Lia Thomas, settling with feds on transgender athletes case. *The Associated Press*. Posted July 2, 2025. Accessed July 2, 2025.

[iv] Dkt. No. 1:25-cv-00333 (D. Md. Feb. 21, 2025).

[v] Case: National Association of Diversity Officers in Higher Education v. Trump. *Civil Rights Litigation Clearinghouse*. Accessed July 2, 2025. <https://clearinghouse.net/case/46024/>.

[vi] Dkt. No. 1:25-cv-02005 (N.D. Ill. Feb. 26, 2025).

[vii] Case: Chicago Women in Trades v. Trump. *Civil Rights Litigation Clearinghouse*. Accessed July 2, 2025. <https://clearinghouse.net/case/46181/>.

[viii] Students for Fair Admissions v. President and Fellows of Harvard College. *Oyez*. Accessed July 3, 2025. <https://www.oyez.org/cases/2022/20-1199>.

[ix] In Revenue Ruling 71-447, the Internal Revenue Service explained that even a private school that does not have a racially nondiscriminatory policy as to students is not eligible to be exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code. The ruling used the following rationale: (1) an educational trust must be a common law charity to be exempt under IRC 501(c)(3); (2) every charitable trust is subject to the requirement that its purpose may not be illegal or contrary to public policy; and (3) there is a clear public policy against racial discrimination, whether public or private. Assuming that race-based criteria are illegal, there is a colorable argument a racially restricted private scholarship trust or receiving scholarship funds subject to race-based private restrictions could jeopardize exempt status under Section 501(c)(3). One might plausibly argue that a racially restricted scholarship trust is not necessarily incompatible with exemption requirements under IRC 501(c)(3) since in practice, a private trust whose beneficiaries are restricted to members of a particular race does not necessarily foster racial discrimination in education. But the asserted view is that race-based scholarship programs and policies are inherently discriminatory, strengthening the argument above that race-based scholarship restrictions may preclude exempt status under IRC 501(c)(3).

[x] See National Association of Diversity Officers in Higher Education v. Trump, Dkt. No. 1:25-cv-00333 (D. Md. Feb. 21, 2025); Chicago Women in Trades v. Trump, Dkt. No. 1:25-cv-02005 (N.D. Ill. Feb. 26, 2025); Michael S. Schmidt & Michael C. Bender. "University of Virginia President Resigns Under Pressure From Trump Administration". The New York Times. ISSN 0362-4331. Accessed July 1, 2025; Samantha Chaney. DEI language removed from Northeastern University website in wake of Trump executive order. CBS News. Accessed July 3, 2025.