

## Overview: Defending Grant Agreements from Anti-DEI Attacks

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### Introduction and Summary

Since his inauguration, President Trump and his Administration have attacked federal funding programs that include diversity, equity and inclusion (“DEI”) and environmental justice by freezing funding, requesting amendments to funding agreements, requesting a “certification”<sup>1</sup> in the agreements, and trying to terminate agreements. This guidance provides general recommendations for awardees in light of these threats and can be used to help advocate for the continuance of programs like Solar for All and the Energy Rebate programs. This resource is meant to be useful for both direct awardees/subawardees of federal grants AND for community organizations engaging with awardees (i.e. state energy offices, green banks, etc.)

For a more in-depth look, check out this [In Depth Resource on Guidance for Defending IRA/IIJA Grant Agreements from Anti-DEI attacks](#) from Equity Fund and Just Solutions.

### For Awardees: What Should State Awardees and Other Awardees Do Now?

- **Comply with Current Terms and Conditions:** Make sure that you understand your obligations under your most recent **signed** award agreement including amendments. This most recent agreement (with its agreed-to amendments) is a legally binding contract with the federal agency. Awardees and subawardees should ensure that they comply with all terms and conditions of their award agreement.
- **Document Work and Communications:** Document all your work demonstrating compliance with the terms and conditions of your award agreement, as well as communications with the relevant federal agency contacts.
- **Do Not Amend Agreements Now: Do not** agree to change any provisions of your agreement at this time, because:
  - Key provisions of the [anti-DEI Executive Orders](#) are subject to ongoing litigation and have already been found to raise constitutional concerns;
  - Award agreements were developed to be consistent with the law, statutory mandates, and the relevant agency guidance that designed the program. *Removing provisions from these agreements may raise new legal concerns because they may cause the grant to be out of compliance with these legal authorities.*
- **Consult with Attorney for Specific Advice:** Consult with your own legal counsel for specific advice tailored to your project. For states, this should include the Attorney General's office, and for other grantees, consider contacting [L4GG's Fund Protection Clinic](#).

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<sup>1</sup> One of the Anti-DEI Executive Orders states that grantees should be required to certify that they do “not operate any programs promoting DEI that violate any applicable Federal anti-discrimination laws.” A certification refers to a confirmation or validation that is included in the agreement.

## Background + Timeline of Executive Orders and Resulting Legal Action

### Anti-DEI Executive Orders

On January 20, 2025, President Trump issued Executive Order 14151, "[Ending Radical and Wasteful Government Programs and Preferencing](#)." This order calls for an end of all diversity, equity and inclusion ("DEI") programs and for terminating, "to the maximum extent allowed by law," all "equity-related grants and contracts." On January 21, 2025, President Trump signed Executive Order 14173, "[Ending Illegal Discrimination and Restoring Merit-Based Opportunity](#)." This order requires contracts and grant awards to include a certification that "compliance in all respects with all applicable Federal anti-discrimination laws is material to the government's payment decisions." Some agencies have taken actions apparently meant to implement these anti-DEI Executive Order, by attempting to require this certification, requesting amendments of contracts, and attempting to terminate grants without following processes required by regulation.

- **Ongoing litigation:** On February 3, 2025, the city of Baltimore, restaurant workers, and higher education groups filed a [lawsuit in federal court](#) challenging the anti-DEI Executive Orders as unconstitutional and exceeding presidential authority.
  - [On February 21, 2025, a federal judge blocked substantial portions of the anti-DEI Executive Orders](#), finding that they were unconstitutionally vague and constituted viewpoint discrimination.
  - On March 14, 2025, the Fourth Circuit Court of Appeals [halted the preliminary injunction](#) and expedited the appeal on the merits requiring briefing to be filed in April and May 2025.
  - The federal government may attempt to enforce the Anti-DEI EOs at this time, but this does not mean that agreements should be changed, especially given the significant uncertainty due to the ongoing litigation.
  - In addition, a separate challenge to both anti-DEI EOs was [filed](#) by the National Urban League and various other nonprofit organizations in the District Court of the District of Columbia on February 19, 2025

**Funding Freeze Executive Order:** In January, 2025, President Trump signed Executive Order 14154, "[Unleashing American Energy](#)." Section 7 of the order directs all federal agencies to "immediately pause the disbursement of funds" that were appropriated by Congress under the Inflation Reduction Act ("IRA") and Bipartisan Infrastructure Act ("BIL," also known as the Infrastructure Innovation and Jobs Act or "IIJA"). As context, the majority of IRA and BIL funding was obligated during the Biden Administration.

- **Courts Rule to Unfreeze Funds:** Two federal district courts have required the Administration to release "frozen" funds that have already been obligated.
  - On January 31, the U.S. District Court for the District of Rhode Island granted a [temporary restraining order](#) ("TRO") prohibiting the Trump Administration from freezing financial assistance to 23 states and [requiring](#) federal agencies to follow this court order.
  - On February 10, the Court issued an [order](#) to enforce the January 31 TRO, following [immense evidence](#) that awardees still could not access funding.

- The Trump Administration attempted to reinstate the funding freeze, but the 1st Circuit Court of Appeals [denied the request on February 11](#).
- On February 28, the plaintiff state Attorneys General filed a [second motion](#) to enforce the Rhode Island District Court's TRO, providing further [evidence](#) that funds for grants administered by agencies including Department of Energy, Department of Homeland Security, and FEMA remain inaccessible.
  - On February 3, the U.S. District Court for the District of Columbia [granted another](#) TRO of the OMB's freeze on federal grant disbursements. On February 25, 2025, in the same case, the D.C. District Court issued a [preliminary injunction](#) blocking the blanket freeze and ordering that written notice of this order be given to federal agencies.

## Guidance to Defend Grant Agreements from Anti-DEI Threats

### General Guidance

- Executive Orders (EOs) **do not have the power themselves** to upend established law in statute and regulation. Only Congress has the authority to amend existing law, and regulations can only be changed through a legally valid administrative process.
- Grant awards are **legally-binding agreements** between the federal government and the grantee that are protected in federal regulations. As long as the awardee understands and fully complies with all terms and conditions of their award, the federal government is obligated to hold up their end of the bargain.
- Attempts by federal agencies to implement an Executive Order that pauses, stops, or modifies legally-obligated funding for policy reasons would likely violate both the Constitution and the [Impoundment Control Act \(ICA\)](#). **Stopping or modifying any legally-obligated federal funding for policy reasons is outside of the Executive Branch's scope.** Congress makes policy and the law and the Executive Branch's job is to enforce it.
- **Agencies are limited in their ability to pause disbursement of funds for signed award agreements.** Federal grant regulations establish that grantees "must be paid in advance" if they are in good standing<sup>2</sup> and in compliance with the terms and conditions of their grant. Grantees that are not states must be reimbursed "within 30 calendar days of receipt of the payment request" unless there is a reasonable belief that the request is improper.<sup>3</sup>

### Guidance for Threatened Grant Termination

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<sup>2</sup> "Good standing" in this context means the awardee is in compliance with all the terms and conditions of the agreement, including the financial, programmatic, and legal requirements and have not been suspended or debarred. This [guide](#) provides some best practices to help grantees remain in good standing.

<sup>3</sup> An improper payment is a payment that should have not been made under the terms and conditions of the agreement, including a payment to an ineligible party, a payment for an ineligible good or service, or a duplicate payment.

Federal financial assistance regulations in the Code of Federal Regulations provide further protections to awardees, subrecipients, and contractors. Based on these regulations, which generally apply to federal grants, loans and loan guarantees, the federal government can only terminate an award agreement if<sup>4</sup>:

- The recipient (grantee or subgrantee) fails to comply with the terms and conditions of the award;
- The recipient consents to the termination or partial termination;
- The recipient requests the termination or partial termination; or
- \*\* Pursuant to the terms and conditions of the Federal award, including, to the extent authorized by law, if "an award no longer effectuates the program goals or agency priorities."

\*\* Contracts Signed After October 1, 2024: For agreements signed or amended after October 1, 2024, an agency can only terminate awards for reasons related to "goals or agency priorities" if that reason for termination is included in the terms and conditions under the agreement. In other words, if language allowing termination because the grant no longer effectuates program goals or agency priorities was not included in the agreement, then the agency cannot terminate an agreement for policy reasons. **This means that the inclusion of "DEI" or "environmental justice" is not a legally sound reason for grant termination.**

\*\*\* **Amendments After March 25, 2025:** On March 25, 2025, EPA updated its [general terms and conditions](#) to include, among other things, new language that will make it easier for EPA to terminate grants and a new provision with certification language related to DEI. EPA asserts that these new terms and conditions will apply to any new agreements or amendments to existing agreements after March 25, 2025.

\*\* Contracts Last Amended Before October 1, 2024: For contracts that were last amended before October 1, 2024, "DEI" or "environmental justice" is still not likely a legally valid reason for termination of the contract because federal financial assistance regulations require that the program goals be clearly communicated during the pre-award phase of program planning and design,<sup>5</sup> so any changes would likely need to still align with those agreed upon goals<sup>6</sup>. It is important to examine the relevant agency goals at the time of the agreement, the statutory requirements of the program, and the terms and conditions of the contract to weigh this argument.

If a contract is terminated or if a grantee receives a stop work notice, the grantee should first consult with an attorney about how to exhaust available administrative remedies laid out in the terms and conditions of the agreement or applicable regulations to challenge the termination. In other words, look at how your agreement's terms and conditions and applicable regulations address disputes.

## **Guidance for Request to Amend Grants to Remove Important Terms**

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<sup>4</sup> Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," found at 2 C.F.R. Part 200. Under 2 C.F.R section 200.340(a)

<sup>5</sup> 2 C.F.R. §§ 200.202 and 200.301.

<sup>6</sup> The program goals were likely published in the federal agency's Notice of Financial Opportunity and accompanying agency guidance after a notice and comment period.

A grantee should not amend an award agreement now for many reasons. First, a federal agency cannot unilaterally, without cause, amend grant terms and conditions. Grant terms and conditions were written to be consistent with federal statutes and agency guidance and amending the terms may violate statutes or controlling agency guidance.

Federal regulations require that new conditions may not be added after an awardee has already accepted those funds, and that terms and conditions should be designed consistent with the law's requirements and goals for the program. For more details on what this means, see [In Depth Resource on Guidance for Defending IRA/IIJA Grant Agreements from Anti-DEI attacks](#).

Given this legal backdrop, agreements should not be amended to remove DEI- or environmental justice-related activities or Community Benefit Plans at this time for the following reasons:

- ***DEI Does Not Violate the Law:*** Initially, it is important to remember that DEI programs and language on its face do not violate the law. Civil rights laws and regulations set clear requirements to protect historically marginalized populations, and DEI language and programs do not violate these laws.<sup>7</sup> In fact, promoting diversity, equity and inclusion generally helps ensure that schools, workplaces, and other entities comply with both Constitutional and statutory anti-discrimination protections. This [statement](#) by Attorneys General from 16 states summarizes why DEI policies are not illegal, and may even be required to meet the law.
- ***DEI, EJ, and/or CBPs May Be Required Under Agency Guidance or Statutory Requirements:*** Next, removing DEI-related language or provisions may render the award agreement inconsistent with statutory requirements or implementing agency guidance, which may in turn raise further legal concerns. "Environmental justice," "DEI," and "Community Benefits Plans" are likely consistent with statutory mandates and required under agency guidance. Several IRA programs, including the Solar for All program and the DOE Home Energy Rebates Program, require targeting activities toward certain communities and the agency's relevant program guidance affirms this focus. Agency guidance can only be revised following certain processes.

An executive order or an agency action cannot change statutory language (or the language of the signed Congressional law, in this example the language or the Inflation Reduction Act). The agencies further developed agency guidance, as directed by Congress, that created the grant requirements for these programs. This guidance developed a set of procedures required under federal law, and it is unlikely that the agency could legally change this guidance now that the grant funding has been obligated under award agreements that were developed required by this agency guidance, which went through a valid notice and comment procedure.

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<sup>7</sup> See <https://app.box.com/s/2me4mszr6p4oinnucw8i4jmb8d7570kp> (law professors' memo summarizing why DEI programs are not illegal and may be required to comply with the law).

- ***The Legal Status of the Anti-DEI EOs Is Unresolved:*** In addition, as described above, the legal status of the anti-DEI EOs is unresolved, given the ongoing litigation.

For all these reasons, **awardees should push back on any attempt to remove DEI from an already executed agreement.** Awardees should consult with their own legal counsel for specific advice tailored to your program or project. For states, this should likely include the Attorney General office.

### **Guidance for Requests for Certification**

If a federal agency requires a grantee to certify that the grant is in compliance with the Administration's policies:

- Respond by reporting your direct compliance with the terms and conditions of your grant award and with all applicable laws and regulations.
- Don't panic, because as the [nation's leading civil rights law professors](#), the [Attorney Generals of 16 states](#) and the District Court of Maryland have all affirmed, the activities recommended under DEI and Justice 40 recommendations actually help organizations abide by the law.

***\*\* This memorandum does not constitute legal advice, and it does not replace the need to consult a lawyer for specific legal advice tailored to an agreement or project.***

### **Additional Resources:**

[In Depth Resource on Guidance for Defending IRA/IIJA Grant Agreements from Anti-DEI attacks](#) - This is a more in depth resource from Equity Fund and Just Solutions on how awardees can defend against anti-DEI attacks.

[Fund Protection Clinic by Lawyers for Good Government](#) - A pro-bono legal clinic for federal grantees that can answer legal questions related to grants and awards.

[Trump's Executive Orders 2025](#) - A summary of some of the relevant executive orders and an overview of their impact.