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Federal Government Transition Update - 1.31.25 [1]

January 31, 2025 by Riley Black [2]

Dear Colleagues,

Our office has compiled a list of Frequently Asked Questions pertaining to current executive actions. We will continue to update this list and it will be available on the Federal Transitions Update page [3].

Please continue to contact your campus leadership with questions and to highlight impacts of executive actions on your projects, programs, and departments. The Office of University Counsel and the Office of Federal Relations will continue to analyze the potential impact of these actions on the university.

Jeremy Hueth, Vice President, University Counsel
Danielle Radovich Piper, Sr. VP External Relations and Strategy?

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Executive Actions Generally

There are three kinds of presidential actions, Memorandums, Executive Orders and Proclamations.

1. **What can an executive order do?**

Executive orders manage and direct operations of the executive branch of government (e.g., instructions to federal agencies, request for reports from federal agencies).

2. **What is beyond the authority of an executive order?**

Executive orders do not override existing laws. If an executive order exceeds this authority, it may be challenged in the courts.

DEI - Generally [4]

3. **What is the primary impact of the orders on DEI generally?**

The executive orders prohibit DEI in federal agencies. There are also impacts on federal contracting, discussed below.

4. **Do the orders impact the Supreme Court case on affirmative action in student admissions?**

Not immediately. Federal agencies must provide guidance on “the measures and practices required to comply with *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*,” which struck down race-based affirmative action in admissions, by May 21, 2025.

5. **What about potential DEI-related civil rights investigations?**

By May 21, 2025, federal agencies must identify up to nine potential investigations of “illegal DEI” from sectors including institutions of higher education with endowments over $1 billion. It is unclear whether this enforcement priority is limited to private institutions of higher education. Federal agencies also are to identify “other strategies” to encourage the private sector to end “illegal DEI,” including potential litigation for the administration to pursue.

6. **Has freedom of speech or academic freedom been limited?**

No. One order reaffirms free speech protections for institutions of higher education and states that it does not prohibit teachers from advocating for, endorsing, or promoting DEI activities otherwise prohibited by the order.

DEI – Federal Contracting [4]

7. **What impact do the executive orders have on federal contractors?**

We anticipate that the federal government may terminate contracts/grants solely pertaining to DEI/DEIA and may terminate any DEI/DEIA aspects of current contracts/grants. Certain agencies including NASA [5]have already issued notifications to stop all DEI/DEIA work under their awards starting from the date of the notification. The Department of Energy [6]has removed the (PEIR) Promoting Inclusive and Equitable Research requirement on all open proposals to the Office of Science.

Going forward, federal contracts or grants must also include a term that requires the university to certify that it does not operate “any programs promoting DEI that violate any applicable Federal anti-discrimination laws.” Additionally, a previous executive order that required federal contractors to have affirmative action plans has been rescinded.

8. **How is contractor/grantee defined?**

This is usually broadly defined as the “Regents of the University of Colorado,” but contracts/grants also list a specific Principal Investigator and a project. It is anticipated that some of the termination orders/amendments to federal contracts/grants will come broadly to the university as a whole and some will be case-by-case to narrow the scope of work for a particular PI/project.

9. **How are DEI, DEIA, and “equity-related” defined?**

DEI is defined as “diversity, equity, and inclusion” and DEIA is defined as “diversity, equity, inclusion, and accessibility,” but those terms are not further defined, nor is “equity-related” defined by the executive order. As a starting point, PIs should determine if the contract/grant specifically refers to diversity, equity, inclusion, or accessibility in the scope of work, and consult with campus offices of contracts/grants for further guidance if needed.?It is anticipated that the government will strike all DEIA plans included in proposals/awards and all areas

specifically labeled as DEI or equity plans, but how far this will extend into “related” areas is yet to be seen.

10. **Can the federal government claw back funds already disbursed?**

No. This would not be permissible under general contract law principles, and the executive orders have been limited to addressing funding going forward.

11. **Can the federal government terminate future work on a grant/contract?**

Most likely, yes. Most contracts/grants allow the government to terminate work going forward. PIs should check their contracts/grants for terms regarding funding and termination.

12. **If future work is terminated, is there any recourse for the contractor/grantee?**

So long as the contract/grant is properly terminated, there is not likely to be recourse, but PIs should refer to the terms of the contract/grant and, if needed, consult with the campus contract/grant office to be sure.

Immigration

13. **Can President Trump end DACA through an executive order?**

No. Since DACA is a federal regulation, termination of the program would have to go through the lengthy formal rulemaking process.

14. **What impact does the recission of the protected areas policy have?**

In 2021, the Biden administration issued guidance that Immigration and Customs Enforcement (ICE) should refrain from immigration enforcement actions in higher education institutions, among other areas. The Trump administration has rescinded that guidance.

15. **What if law enforcement comes to campus?**

If you are approached by law enforcement or governmental agents seeking information, in all circumstances direct them to campus police dispatch who will engage the university’s legal services for support as needed.

16. **What if there is a request for records on undocumented students or employees?**

Generally, the university is not obligated to comply with requests for student or employee records without a subpoena or warrant. Under FERPA, a valid subpoena, warrant, or court order is typically required for nonconsensual access to student records, subject to limited exceptions. Various legal frameworks also protect certain employee records, including personnel documents and files. Contact campus counsel if you have questions about a request for student or employee records.

Executive Order: “Protecting the US from Foreign Terrorists and other National Security and Public Safety Threat” [7]

17. **What has happened concerning review of applications for immigration benefits?**

The executive order institutes increased review of applications for U.S. immigration benefits including visas and admission to the United States.

18. **To whom does the executive order apply?**

The new restriction applies to any individual (foreign national) who applies for a U.S. immigration benefit such as but not limited to visas, admission (entry) to the United States, permanent residency "green card" applications, petitions for non-immigrant temporary status, etc. It does *not* apply to U.S. citizens.

19. **Does the executive order put in place a travel ban?**

No. The executive order does not implement a travel ban. However, it requires that, within 60 days, a report be submitted to the president identifying countries whose citizens should be subject to a full or partial ban on entering the United States.

20. **How will the executive order impact pending immigration applications including visa applications at U.S. consulates and embassies and permanent residency applications pending with the U.S. Citizenship and Immigration Services?**

To carry out the executive order, federal agencies will likely scrutinize all applications more, which will slow down the process. There may be delays as well when seeking to be admitted to the United States at the airports or land borders.

21. **Does the new entry restriction require an international student and scholar to leave the United States?**

No. The new restriction does not require anyone in the United States to depart. The restrictions do not affect the immigration status for those who are already present in the United States. The U.S. government will not ask them to leave the country if they maintain their current immigration status.

Gender Ideology Executive Order [8]

22. **What does this order do?**

The order provides that "[i]t is the policy of the United States to recognize two sexes, male and female." This order also prohibits the use of federal funds to promote gender ideology, which it defines as "an ever-shifting concept of self-assessed gender identity." By February 19, 2025, the Secretary of Health and Human Services shall provide "clear guidance expanding on the sex-based definitions set forth in this order."

23. **What is the impact of this order on Title IX?**

Title IX prohibits sex discrimination in education. The Biden administration interpreted this prohibition to include discrimination based on sexual orientation and gender identity. This order rescinds that broader interpretation. University policy continues to prohibit discrimination based on sexual orientation and gender identity.

24. **Will this order impact the university's ability to provide gender affirming care to youth?**

Yes, it will. The head of each federal agency "that provides research or education grants to medical institutions" must "immediately take appropriate steps to ensure institutions receiving Federal research or education grants end the chemical and surgical mutilation of children." "Chemical and surgical mutilation" is defined by the order in detail and the order notes that it is "sometimes referred to as 'gender affirming care.'" "Children" is defined by the order to include those under 19 years of age.

25. **Does this order prohibit the university from providing benefits that cover gender affirming care?**

Although the order addresses certain health insurance plans provided by the federal government, it does not address the university's health plans. We will continue to monitor for potential impacts.

Anti-Semitism Executive Order [9]

26. **What does this executive order do?**

This order identifies existing immigration law, which provides that potential bases for deportation of a non-citizen include "endors[ing] or espous[ing] terrorist activity or persuad[ing] others to endorse or espouse terrorist activity or support a terrorist organization."?It directs federal agencies to make recommendations to the president on how to "familiarize" institutions of higher education with this existing immigration law so institutions of higher education "may" monitor and report any such activities by non-citizens.

The order also calls for federal agencies to inventory all pending civil rights complaints, filed with administrative agencies or courts, involving post-10/7/23 campus anti-Semitism. For the court cases, the federal attorney general must indicate if she "intends to or has taken any action with respect to such matters, including filing statements of interest or intervention."

27. **Should campus equity offices prepare reports of submissions/resolutions relevant to the executive order?**

No, not beyond what is already required by other laws. The executive order requires further action from the federal government, not the university.

28. **How does FERPA and/or Colorado law impact how institutions of higher education monitor/report on activities "by alien students and staff"?**

Laws, including FERPA, continue to apply and are not superseded by the executive orders. More importantly, the order does not mandate monitoring or reporting by institutions of higher education. The next step is for federal agencies to make recommendations to the president on how to "familiarize" institutions of higher education with existing immigration law. The goal of familiarizing institutions of higher education is "so that such institutions may monitor and report" certain student activities, but nothing in the order requires it.

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