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Divergent Responses to DEI Executive Order: Charting a Course for Educational Institutions

Client Alert

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Introduction

In the wake of the Trump Administration's Executive Orders regarding Diversity, Equity, and Inclusion (DEI) initiatives, colleges and universities have had varied responses. The primary Executive Order prompting these changes is Executive Order 14173, titled "Ending Illegal Discrimination and Restoring Merit-Based Opportunity," issued on January 21, 2025. The Order aimed to address alleged illegal discrimination and promote merit-based opportunities in federally funded institutions, including higher education. This article explores the implications of the Order for higher education, the challenges it posed to DEI initiatives, and the strategies employed by universities and colleges to navigate its requirements.

Spectrum of Responses

Some universities, especially those in the Ivy League, have taken an openly confrontational approach to the bevy of changes. In response to the Trump Administration freezing \$2.2B in grants and \$60M in contracts to Harvard, Harvard filed suit against the Trump Administration in federal court seeking an injunction against the freeze. Princeton's President penned an essay in *The Atlantic* calling the Trump Administration's freezing of \$400 million in federal aid to Columbia University, "a radical threat to scholarly excellence and to America's leadership in research." Princeton later received notice that the federal government had taken aim at some of Princeton's own programs in plans to suspend dozens of research grants to the University.

Other higher education institutions have taken a more measured stance in a bid to protect the critical funding that they receive from the federal government. The general counsel

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for the UNC system, which includes 16 institutions plus a specialized high school, issued a memo suspending any mandated “course credits related to diversity, equity, and inclusion,” citing concerns about its significant federal research funding being at risk. The University of Michigan decided to close its DEI offices and suspend its DEI strategic plan in light of recent court rulings about the DEI Executive Orders and the Department of Education interpretation of the U.S. Supreme Court’s ruling striking down race-based affirmative action in college admissions as applicable to other university programs outside of admissions.

Finding the Right Path

Despite what appears to be a clear sea change in federal law and policy, colleges and universities will find themselves in a difficult, if not impossible, position in trying to appease all parties with a vested interest in their institution: federal and state governments, faculty, students, unions, local elected officials, donors, etc. Mere window dressing, such as changing the name of a DEI program without changing its content, is unlikely to appease the Trump Administration and may risk federal funding. On the other hand, precipitous and broad rollbacks of DEI initiatives may unsettle a university’s community, giving rise to campus protests or donor flight. Still other issues can arise if the university ignores existing federal and state civil rights laws that remain in place.

What is the right path for a college amid these shifting tensions? These three steps may help you decide:

- Examine all DEI-related programs at your institution: From admissions policies to affinity groups, determine whether there are programs that will draw attention from the federal government, and consider your options for pausing these programs or reconfiguring them so that they do not target or favor any protected status: race, color, national origin, gender, sex, sexual orientation, religion, etc.;
- Do not inadvertently make your institution a target: Issuing statements or making media appearances regarding opposition to federal mandates has the potential to backfire and draw federal scrutiny. Unless you are prepared to have federal grants or other aid suspended and to engage in litigation, avoid these unnecessary provocations; and
- Apply a wait-and-see approach: Over the next several months many of the court challenges to Executive Orders and other federal actions will resolve, providing guidance on what programs are legal. At that time, an institution may as appropriate reinstitute paused or reconfigured programs or maintain the changes previously made, depending on what is feasible and practical in their circumstances.

Conclusion

Higher education institutions need to be mindful of their reaction to recent changes at the federal level regarding DEI. By carefully considering the right steps and taking appropriate short-term actions, institutions may successfully navigate these challenges and limit risk. For guidance tailored to your

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specific institution, contact the authors of this Client Alert or your Butzel attorney on our Education Industry Team.

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