



February 28, 2025

REVISED MEMORANDUM REGARDING ALL DEPARTMENT OF ENERGY FUNDING
OBLIGATIONS, CONTRACTS, AND AWARDS

FROM: BRENT ALLEN, DEPUTY GENERAL COUNSEL FOR
ENVIRONMENT AND LITIGATION

SUBJECT: *National Association of Diversity Officers in Higher Education et al. v. Donald J. Trump et al.*, No. 1:25-cv-00333-ABA (D. Md.)

You are hereby advised that a preliminary injunction has been entered in the case of *NADOHE v. Trump*, No. 1:25-cv-00333-ABA (D. Md.), ECF No. 45 (February 21, 2025). This case challenges three provisions in Executive Order 14151, *Ending Radical and Wasteful Government DEI Programs and Preferencing*, Executive Order of January 20, 2025, 90 Fed. Reg. 8339 (Jan. 29, 2025) and Executive Order 14173, *Ending Illegal Discrimination and Restoring Merit-Based Opportunity*, Executive Order of January 21, 2025, 90 Fed. Reg. 8633 (Jan. 31, 2025).

Please read this guidance carefully and reach out to agency counsel if you have any specific questions.

DOJ Guidance and Court Order

Please review the attached memorandum from the Department of Justice (“DOJ”) further describing the scope of the preliminary injunction and further required actions, and the attached court order. Please comply with all terms of the DOJ guidance, this memorandum, and the court order.

A couple of notes regarding retroactivity and Stop Work orders:

- The court order does not require that DOE change any prior funding agreements that were terminated or formally modified before 6:20 p.m. EST on February 21, 2025.
- Any Stop Work order in effect that was issued pursuant to or cites Executive Order 14151 or Executive Order 14173 (even if it was issued before 6:20 p.m. EST on February 21, 2025) must be rescinded.
- Any Stop Work order issued to a recipient of a funding agreement that has been flagged as being or is arguably “equity-related” must be rescinded whether or not it cites Executive Order 14151 or Executive Order 14173.
- A general Stop Work order—not issued pursuant to Executive Order 14151 or Executive Order 14173—issued to a recipient of a funding agreement that is not “equity-related” may remain in effect and the funding agreement may be modified or terminated.

Notably, the DOJ guidance also requires:

Compliance Tracker:

- Please ensure that communications are sent to all agencies and sub-agencies that issue contracts or grants in your agency or Department. Please keep and maintain a compliance tracker for your and our records of your communications with internal agency officials as well as contractors/grantees regarding the above, as well as any modifications/roll backs of any grant/contract termination.

Please periodically share your compliance tracker with agency counsel, Courtney Meyer (courtney.meyer@hq.doe.gov).

Community Benefits Plans, DEI Terms, and Similar Requirements

- Any actions to remove requirements relating to Community Benefits Plans (or similar requirements), DEI, or Justice40 in any **pending** or **future** funding opportunity announcements, notice of funding opportunity announcements, contracts, or other funding agreements **do not** fall under the court's order. DOE may continue to remove these requirements from pending and future funding agreements.
- If your office intends to continue with a rescission of a Community Benefit Plan (or similar), DEI, or Justice40 requirement for pending and future awards, please use the following language when rescinding any guidance:

“In compliance with the Preliminary Injunction issued on February 21, 2025, in the United District Court for the District of Maryland, *National Association of Diversity Officers in Higher Education v. Trump*, 25-cv-333, the U.S. Department of [name] is rescinding the following communications effective immediately: [title of guidance/announcement/training]; except that the Office of [name] will continue to no longer require [Community Benefit Plans] in any proposal submitted to the Office of [name]....”

- Any **non-equity-related** funding agreements that were awarded based on an application that included a Community Benefits Plan (or something similar), DEI terms, or Justice40 terms where a Stop Work Order or guidance document was issued pursuant to Executive Order 14151 or Executive Order 14173 **should not** be **terminated** or **modified** in any way. DOJ has advised that Stop Work Orders and guidance documents that direct recipients to cease any work pertaining to DEI, Community Benefit Plans (or something similar), or Justice40 requirements based on Executive Order 14151 or Executive Order 14173 must be rescinded. However, your office may make those requirements voluntary if it so chooses. If you choose this option, please add the appropriate language, below:
 - Stop Work Order sent to a specific entity with a non-equity-related funding agreement:

DOE does not believe that any funding agreements issued by [office name] are “equity-related” under section 2(b)(i) of

Executive Order 14151, 90 FR 8339, entitled *Ending Radical and Wasteful Government DEI Program and Preferencing*,¹ nonetheless, out of an abundance of caution it is rescinding the following communications effective immediately: [title of guidance].

However, pursuant to DOE's enforcement authority and in accordance with current administrative priorities, any Diversity, Equity, and Inclusion (DEI), Community Benefit Plan (CBP), or Justice40 activities provided for in the funding agreement, for the time being, are voluntary. Should you choose to engage in any DEI, CBP, or Justice40 initiatives provided for in the terms of the funding agreement, at this time, you will be compensated per the terms of the funding agreement.

- Please **do not** use this language if a specific funding agreement has been flagged as being or is arguably equity related. If a funding agreement has been flagged as being equity-related, please rescind **any** Stop Work orders outright per the DOJ guidance and do not terminate or modify the award in any way.
- Please use the following language when rescinding general guidance documents where your office would like to make any DEI, Community Benefit Plans (or something similar), or Justice40 requirements voluntary:

DOE does not believe that any funding agreements issued by [office name] are "equity-related" under section 2(b)(i) of Executive Order 14151, 90 FR 8339, entitled *Ending Radical and Wasteful Government DEI Program and Preferencing*,² nonetheless, out of an abundance of caution it is rescinding the following communications effective immediately: [title of guidance].

Pursuant to DOE's enforcement authority and in accordance with current administrative priorities, any Diversity, Equity, and Inclusion (DEI), Community Benefit Plan (CBP), or Justice40 activities provided for in any funding agreement, for the time being, are voluntary. Should any recipient choose to engage in any DEI, CBP, or Justice40 initiatives provided for in its funding agreement, at this time, the recipient will be compensated per the terms of the funding agreement.

- If your office is rescinding a general guidance document that may apply to some previously identified equity-related awards, please modify the above-language accordingly.

¹ A prior version of this memorandum incorrectly cited Executive Order 14173 instead of Executive Order 14151.

² A prior version of this memorandum incorrectly cited Executive Order 14173 instead of Executive Order 14151.

- If an underlying funding agreement has **not** been flagged as and is not arguably equity-related, **does not** have a Stop Work order or similar proclamation that is pursuant to or cites Executive Order 14151 or Executive Order 14173, and DOE **has** a non-pretextual independent basis to modify the funding agreement, that agreement can be modified and/or terminated.

Distribution of this Memorandum

Please distribute this memorandum, the attached DOJ memorandum, and the attached court order to all agency personnel whose responsibilities may be affected by this order.

If you have any questions concerning this matter, please feel free to contact:

Courtney Meyer
courtney.meyer@hq.doe.gov

Brent Allen
brent.allen@hq.doe.gov

Attachments:

DOJ Guidance to Defendants Regarding Preliminary Injunction Issued in *National Association of Diversity Officers in Higher Education v. Trump*, 25-cv-333 (D. Md. Feb. 21, 2025)

Preliminary Injunction Order in *National Association of Diversity Officers in Higher Education v. Trump*, 25-cv-333 (D. Md. Feb. 21, 2025)