ISSUE BRIEF

Difficult Conversations: Context and Considerations for Equity Officers and Their Legal Counsel

The current legal and policy landscape has fueled anxiety and confusion for those involved in work related to diversity, equity, inclusion, and accessibility (DEIA), as well as those who provide them with legal counsel. Both must navigate a changing landscape fraught with concerns related to funding restrictions, language use, community perception, and more—all while fulfilling obligations to those they serve.

This issue brief was developed to support these difficult conversations with an eye towards continuing to support work that lessens disparities and creates better health outcomes. Below you will find a high-level overview of changes to the DEIA landscape in recent years, a brief introduction to the concept of the "chilling effect," as well as some items to consider prior to and during these discussions. The resource was created with members of the Network's Equity Officer Peer Group (EOPG) in mind and is intended to serve as a starting point to prompt further considerations in conversations between equity officers and their legal counsel.

Changes to the DEIA Landscape

Policies, programs, and other initiatives that embody principles of DEIA have faced increasing backlash over the last several years. The opposition, which has always existed, became more widespread in 2020, on the heels of a renewed racial justice movement. The movement spurred advancements in laws across the country as well as in policy. For example, in 2016, the American Public Health Association (APHA) launched a national campaign against racism that led to 13 jurisdictions declaring racism to be a public health crisis. This number ballooned to almost 200 in 2020 and then to 250 in 2022. But the resistance to progress also became more pronounced during this time. In September 2020, Executive Order 13950, Combatting Race and Sex Stereotyping, (EO 13950) prohibited certain types of training under the guise of "promoting unity in the Federal workforce" but included restrictions that would impede training on concepts like implicit bias. Several similar state laws were enacted after EO 13950 was signed, and anti-DEIA actions continued to ramp up in the following years.

Since January 2025, the second Trump administration has escalated attacks on DEIA-related activities within and outside of the federal government, with executive orders and federal agency directives among its primary tools for advancing this agenda. On his first day in office, President Trump signed Executive Order 14151, Ending Radical and Wasteful Government DEI Programs and Preferencing, which directed the termination of DEIA mandates, policies, programs, preferences, and activities within the federal government. Soon after came Executive Order 14173, Ending Illegal Discrimination and Restoring Merit-Based Opportunity (EO 14173), a sweeping attempt to end DEIA-related activities by those within the federal government, recipients of

federal funds, and private sector entities under the guise of eradicating illegal discrimination. These are only two of a plethora of orders that have disrupted many critical initiatives that advance health equity.

In the weeks and months that followed, numerous federal agencies took action to carry out the orders' directives, shedding further light on their detrimental effects. For example, in July 2025, the DOJ issued guidance for recipients of federal funds on their engagement in DEIA activities. Often the term "DEIA" is used to describe initiatives designed to promote diversity and inclusion in education or in employment practices, such as hiring and promotions. But the July 2025 guidance, as well as other executive actions, make clear that the administration's focus extends beyond such activities. By targeting practices related to "program participation" and "resource allocation," for example, the guidance takes aim at a wide swath of substantive work performed by grantees and contractors to serve marginalized communities. Similarly, in a May 2026 proposed rule, the Office of Management and Budget sought to embed anti-DEIA restrictions in administration of federal financial assistance, proposing a prohibition on funding awards that "fund, promote, encourage, subsidize or facilitate" DEIA policies, principles, and practices, including with respect to "program participation."

Further expanding the breadth of this anti-DEIA attack is the administration's targeting of what it describes as facially neutral "proxies," such as "cultural competence" and geographic preferences, "designed or applied with the intention of advantaging or disadvantaging individuals based on protected characteristics." This approach reflects a broader practice of scrutinizing all kinds of activities that use certain language, regardless of whether they distinguish based on the protected characteristics (e.g., race and sex) that are purportedly the focus of the anti-DEIA executive orders. Indeed, in 2025, numerous news outlets reported that agencies implementing the administration's anti-DEIA directives have flagged hundreds of words to avoid in grants and contracts, covering a vast array of concepts related to equity. Together, these broad—and, at times, vague and confusing—executive orders and directives raise legitimate concerns for equity officers grappling with the implications for their work to promote health equity.

In addition to these federal-level actions, states are increasingly advancing anti-DEIA efforts through legislation and other mechanisms. For example, in April 2026, Florida enacted legislation prohibiting counties and municipalities from engaging in DEIA-related activities, including establishing or maintaining DEI offices and programs and funding or promoting DEI regulations, programs, and policies. Those working to advance equity in states that have enacted such measures, or that are considering doing so, face heightened barriers and are especially in need of support to understand implications and navigate opposition.

Chilling Effect on DEIA Initiatives

In recent years, governmental entities and others have made significant changes to DEIA and related initiatives in response to state and federal law and policy. In a June 2025 APHA survey of over 500 of its members and affiliate leaders, 50 percent reported that both public support and their own organization's overall support for DEIA decreased over the preceding six months. Health departments, along with respondents in academia, also reported a significant decrease in external funding for DEIA work as well as a decline in budget aligned with DEIA goals. Reports support similar findings in other sectors. For example, in the last few years, a large number of institutions of higher education renamed offices whose titles previously included words like "diversity" and "equity." A 2025 report also noted that more than half of the 100 largest U.S. public companies "made material adjustments to DEI-related messaging, structure or terminology compared to the prior year, reflecting a broader recalibration amid legal, political, and reputational pressures."

Amidst the escalating pressure there is growing confusion about what exactly is mandated by various anti-DEIA actions. Critics of actions targeting DEIA and related efforts have pointed out that, in addition to rolling back social progress made in years since enactment of civil rights-era legislation, the directives are overbroad and vague and have resulted in a chilling effect with widespread implications, as evidenced above, for potentially all DEIA-related work.

We introduce the concept of the chilling effect here as a frame of reference to consider during these difficult conversations, as discussed in the next section. Though it is a complex issue subject to wide interpretation, for the purposes of this resource, it is introduced to impart the notion that when a mandate is too broad or is vague it can lead to different types of self-censorship and overcorrection in an effort to avoid violation.

While the chilling effect is a concept that applies in a number of areas (for example, it may be associated with a predicted decrease in participation in public programs), in legal contexts it is frequently associated with rights to free speech and expression. One regularly cited definition for the chilling effect is that it "occurs when individuals seeking to engage in activity protected by the First Amendment are deterred from so doing by governmental regulation not specifically directed at that protected activity."[1] It is a "well-accepted insight that a person has been chilled in his expression if he refrains from engaging in protected speech out of fear of a legal threat and the associated costs from vague or overbroad laws."[2] Vague and overbroad laws or policy not only make compliance difficult; they also make the law or policy susceptible to challenge.

For example, the complaint filed in *San Francisco AIDS Foundation et al v. Trump* alleges that "[t]he purpose and effect of the Executive Orders is to suppress constitutionally protected First Amendment activity by targeting specific content and viewpoints through a range of mechanisms."[3] Other relevant cases may not explicitly reference this phenomenon but still illustrate how ambiguous anti-DEIA directives can generate confusion, potentially leading to overcompliance. Plaintiffs have argued, for instance, that anti-DEIA actions violate the Fifth Amendment's void-for-vagueness doctrine, with one complaint stating, "[u]nder the Due Process Clause of the Fifth Amendment, a governmental enactment, like an executive order, is unconstitutionally vague if it 'fails to provide a person of ordinary intelligence fair notice of what is prohibited, or is so standardless that it authorizes or encourages seriously discriminatory enforcement.'"[4]

These and other lawsuits illustrate how recent anti-DEIA actions can foster a chilling-type effect. In these situations, the uncertainty generated by ambiguous anti-DEIA actions may lead to anticipatory compliance as many implement the broadest possible interpretations of directives to avoid a violation. As anti-DEIA efforts and the confusion surrounding them continue, the line between what is compliance and what is overcompliance has blurred. Furthermore, vague and overly broad directives can raise serious legal concerns.

Such concerns were raised by sixteen states and the District of Columbia in relation to Department of Health and Human Services' (HHS) actions prohibiting references to "gender ideology" (prompted by Executive Order 14168, Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government (EO 14168)) thereby impacting sexual health education programs.[5] The complaint alleges that HHS' actions have irreparably harmed the plaintiffs "by forcing them, and their subgrantees, into an impossible position: lose critical funding for sexual health education programs, or violate federal and state laws requiring medically accurate, non-discriminatory information within those programs."[6] An October 2025 order issuing a preliminary injunction in the case states that, "[g]iven this broad range of material deemed by [HHS] to be 'gender ideology,' and given that because the term lacks scientific or any other discernable basis, it is likely undefinable, the Court concludes that it is too vague to give Plaintiff States notice of what [HHS] expects from them."[7]

A coalition of counties and cities also jointly filed a complaint against the Department of Housing and Urban Development (HUD) and the Department of Transportation (DOT) in response to new grant funding conditions prompted by EO 14173 and EO 14168, among other executive orders.[8] The complaint lists several ambiguous terms and conditions of the new requirements, alleging, among other claims, that the requirements are unconstitutionally vague in violation of the Fifth Amendment's Due Process Clause. The complaint highlights the connection between such vague directives and a chilling effect, alleging, "[t]he vagueness with which the terms and conditions identified above define the conduct they prohibit is likely to chill First Amendment protected expression on matters of public concern."[9] Plaintiffs here were granted a motion for preliminary injunction on August 12, 2025.[10]

The City of Seattle, Washington also filed a complaint in response to actions prompted by EO 14173 and EO 14168, alleging improper interference with congressionally authorized federal grants. The complaint argues that "[t]he Trump Administration has undertaken significant steps to implement these unlawful Orders by directing federal agencies to condition disbursement of federal grant funds on vague and arbitrary notions of what constitutes 'DEI' and 'gender ideology.'"[11] The complaint further states, with regard to DOJ grants in particular, "[a]s new directives pour from these Orders, Plaintiff is at a loss regarding the meaning of the Order, forcing Plaintiff to choose between potential legal liability or self-censorship in the face of legal uncertainty."[12] The complaint alleges, among others, a violation of the Fifth Amendment's Due Process Clause on the grounds of vagueness.[13] On October 31, 2025, the court granted the City's motion for a preliminary injunction.[14]

Despite the mounting resistance evidenced by these and other cases pushing back against anti-DEIA actions, when faced with tough calls, there still may be a tendency to lean towards overcompliance. For example, in response to actions against DEIA offices in colleges and universities, one law professor argued that "…dismantling the departments entirely and shifting their duties into separate offices…may be the best way to avoid politicians' scrutiny." This approach may be favored by attorneys who, reasonably, tend to be risk averse. How recent law or policy directives may impact a particular entity or program will depend on a variety of factors, including whether there is a decision to challenge a law or policy. In any case, equity officers and their legal counsel should be aware that the targeting of DEIA initiatives has prompted significant legal concerns.

CONSIDERATIONS

Amidst these escalating attacks on DEIA and the resultant chilling effect on related work, equity officers and their attorneys may increasingly find themselves having difficult conversations about these efforts. Current or proposed work to advance the health of disenfranchised communities may pose new legal or funding risks. Those risks are made only more daunting when federal directives and other anti-DEIA policies are vague and their practical implications are unclear. In light of these risks and uncertainties, abandoning DEIA-focused or related efforts may seem like the most viable option. But advancing equity work is far from impossible—and is even more crucial—in the current climate. Now more than ever, equity officers and their legal counsel must work together to effectively navigate opposition.

The following considerations may help inform these often-challenging conversations between equity officers and legal counsel. While decisions regarding particular efforts will depend on the specific circumstances at hand, including the nature of the work and the severity and likelihood of any repercussions, these considerations can help equity officers and their counsel take into account key legal, programmatic, and other factors in their decision-making to continue advancing health equity to the extent possible.

Navigating Vague and Broad Directives

In conversations about the viability of DEIA and related initiatives, equity officers and their legal counsel should note the chilling effect dynamic playing out as a result of vague and overly broad directives. This will allow them to recognize, and if appropriate question, any tendency toward compliance efforts that are not strictly required. Further, they should be aware that anti-DEIA actions that are vague and overly broad are vulnerable to challenge, as discussed above. Even where challenging anti-DEIA actions is not feasible, these legal developments may bear on discussions between equity officers and their legal counsel when considering decisions to modify, curtail, or even entirely discontinue DEIA-focused or related initiatives.

Focus on the Goals

In conversations about efforts to advance equity in the current climate, taking a goals-oriented approach can help equity officers and their attorneys avoid roadblocks that could shut down DEIA initiatives. In discussions with legal counsel about DEIA-focused and related efforts, equity officers may consider identifying their overarching goal and asking how *can* we achieve this? That goal could be improving certain community health outcomes or expanding access to important services, for example. Framing the ask in this way lays the foundation for an open-minded discussion to identify potential avenues that may pose less legal or financial risk, like race-neutral interventions, interventions that directly remediate the effects of past discrimination,[15] and other promising practices, for example, those identified recently by APHA. Leading with the goal and why it matters can also help to foster mutual investment in reaching that goal, discouraging abandonment of the matter without full consideration of potential courses of action. From there, equity officers and their legal counsel can work together, taking necessary steps to pursue available routes for achieving their goals in a legally sound manner, such as compiling evidence and documentation and monitoring relevant legal and funding developments.

Programmatic Concerns

Decisions regarding efforts that could be attacked under anti-DEIA orders should consider the range of practical implications for programmatic work. These practical implications, which may weigh in favor of or against continuing DEIA-focused and related efforts, are another factor that may inform analysis of the costs and benefits of changes to DEIA work. Government departments, institutions of higher learning, and nonprofit organizations across the country have been deliberating continuing DEIA and related initiatives when doing so could threaten financial support for other fundamental programs or activities. Difficult decisions are being made regarding whether to continue, reframe, or set aside DEIA-focused or related efforts. Where a decision is made to reframe work, for example, changes in program title or description may create confusion for both those on the receiving end of services as well as broader partners. These and other factors, including whether changing or terminating a program could be expected to contribute to worse health outcomes, should also be discussed. To be clear, we are not recommending any particular course of action be taken with regard to programmatic concerns and understand the serious risks that entities face in making these decisions. This section is only intended to highlight additional issues for equity officers and their legal counsel to consider and prompt further discussion.

The Whole Legal Picture: The Continued Importance of Existing Protections Under Law

As equity officers and their legal counsel prepare for discussions on how best to continue work to advance equity despite current challenges, consideration should be given to existing state and federal legal requirements that offer protection for historically disenfranchised groups, including the Fourteenth Amendment,

which stands as a reminder that no person may be denied "equal protection of the laws." Other federal and state protections must also be considered.

For example, the sweeping federal legislation of the Civil Rights Act of 1964[16] includes protections for voting, public accommodations, federally assisted programs, and more. Title VII of the Act prohibits discrimination in employment based on race, color, religion, sex or national origin by employers with fifteen or more employees.[17] States across the country have also enacted even more stringent anti-employment discrimination laws. Michigan's Elliot-Larsen Civil Rights Act applies to all employers in the state, regardless of size, and prohibits discrimination on the basis of "religion, race, color, national origin, age, sex, sexual orientation, gender identity or expression, height, weight, or marital status."[18] This law also protects against discrimination in relation to pregnancy or related conditions, similar to the federal Pregnancy Discrimination Act, an amendment to Title VII.[19]

The Americans with Disabilities Act (ADA) is another federal law that prohibits discrimination, here against individuals with disabilities and in several settings, including employment and educational settings.[20] And Title IX of the Education Amendments of 1972 protects against discrimination based on sex in education programs and activities that received federal financial assistance.[21]

Many states also have laws that mandate an office of equity or something similar. For example, Alabama law established an Office of Minority Affairs intended to "advise the Governor on issues affecting minorities, including women, focusing on the improvement of the overall quality of life of minorities…"[22] And the director of the Office must conduct community outreach "to assess and address issues facing women and minorities" as well as "[e]nsure that all women and minorities are better represented and receive equal access in areas such as business development, education, health care, housing, government services, and criminal justice matters" among other directives.[23]

To learn more about potential laws to consider, as well as how to apply these legal concepts to advance equity, see ChangeLab Solutions' Legal Primer for Policymaking to Advance Health & Racial Equity. While legal counsel involved in these discussions will likely have spent time considering other important factors in preparing to address requirements or restrictions related to more recent anti-DEIA orders and rhetoric, potential legal existing obligations under the Fourteenth Amendment, the Civil Rights Act, the ADA, and other examples cited in this section remain vitally important and should be considered and discussed with equity officers. Keep in mind that DEIA initiatives, which often focus on inclusion and fairness, also work to help to prevent the types of treatment that existing laws protect against.

Community Input and Perception

A crucial, and sometimes overlooked, consideration in recent conversations regarding DEIA efforts is community input and perception. As stated earlier, efforts to reframe activities or change language may lead to confusion, however there may be more at stake. Take the example of a state health agency mandated by state law to address health disparities in historically underserved communities. A state agency may reconsider program language and decide to employ alternative framing to continue the required programmatic work in a way that it believes reduces legal and funding risks. However, community members who have benefitted from such programs in the past may feel a sense of abandonment or confusion, especially as other protections and programs are seemingly under fire in many corners.

In cases where decisions are made to rephrase messaging or to completely cut certain programs or activities, consider whether it is appropriate to invite any degree of community involvement into these decisions. This may provide not only an opportunity to explain the practical dilemmas being confronted, but also provides an opportunity for community input and, therefore, buy-in on the ultimate decisions made. This is not to recommend any particular course of action, or assume that community members may or may not feel a certain way when changes are made, but only to offer items to consider when such decisions are being made.

Involving Leadership

If conversations about the feasibility of equity work become difficult, involving leadership from the equity officer's office or agency may help those involved reach consensus. Leadership can bring to the conversation a broader perspective, accounting for considerations that may not have been given full weight originally. For example, leadership may be able to speak to the importance of the programmatic considerations discussed above, emphasizing ongoing obligations and the continued need to advance community health goals within any legal and funding constraints. Or they may be able to speak to the role of community perception, how it should inform decision-making on equity initiatives, and the costs of abandoning this work.

At times, equity officers may feel that they are not well equipped to advocate for consideration of these factors when faced with what are framed as and may be serious legal risks. Those in leadership are uniquely positioned to make judgment calls about how to proceed amid legal and funding risks and difficult cost-benefit tensions. In these situations, involving leadership can reduce the burden on equity officers and their counsel, and help to ensure that the full picture is taken into account.

CONCLUSION

Discussions between equity officers and legal counsel may be more difficult to navigate in light of changes to state and federal law and policy. But taking relevant context and key considerations into account, while starting with an understanding that everyone is invested in the goal of providing the best services for the public they serve, can make a difficult conversation easier to navigate.

This document was developed by Phyllis Jeden, J.D., Deputy Director, Mid-States Region, and Emma Kaeser, J.D., Senior Attorney, Mid-Staes Region. The Network promotes public health and health equity through non-partisan educational resources and technical assistance. These materials provided are provided solely for educational purposes and do not constitute legal advice. The Network's provision of these materials does not create an attorney-client relationship with you or any other person and is subject to the Network's Disclaimer.

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[1] Frederick Schauer, *Fear, Risk and the First Amendment: Unraveling the Chilling Effect,* 58 B.U. L. Rev. 685, 693 (1978).
[2] Jonathan W. Penney, Danielle Keats Citron, Alexis Shore Ingber, *The Chilling Effects of Dobbs,* 77 Fla. L. Rev. 357, 365 (2025).
[3] Compl., ¶232 *San Francisco AIDS Foundation et al v. Trump,* No. 3:25-cv-01824 (N.D. Cal. February 20, 2025).
[4] Compl. ¶142 *King County v. Turner*, No. 2:25-cv-00814 (W.D. Wash. May, 2, 2025) (quoting *United States v. Williams,* 553, U.S. 285, 304 (2008)).
[5] Compl., *Washington v. HHS,* No. 6:25-cv-01748 (D. Or. Sept. 26, 2025) (quoting *Fed. Commc'ns Comm'sn v. Prometheus Radio Project*, 592 U.S. 414, 423 (2021)).
[6] *Id.* at ¶6.
[7] *Washington v. HHS,* No. 6:25-cv-01748 at 57 (D.Or. Oct. 27, 2025)(order granting preliminary injunction).
[8] *See* Compl. *King County*, No. 2:25-cv-00814.
[9] *Id.* at ¶150.
[10] *King County v. Turner,* No. 2:25-cv-00814 (W.D. Wash. August 12, 2205)(order granting preliminary injunction).
[11] Compl. ¶52, *City of Seattle v. Trump et al,* No. 2:25-cv-01435 (W.D. Wash. July 31, 2025).
[12] *Id.* at ¶82.
[13] *Id.* at ¶152.
[14] *City of Seattle v. Trump et al,* No. 2:25-cv-01435 (W.D. Wash. July 31, 2025)(order granting preliminary injunction).
[15] *See, e.g.*, *U.S. v. Paradise*, 480 U.S. 149, 107 S. Ct. 1053 (1987).
[16] Civil Rights Act of 1964, Publ. L. No. 88-352, 78 Stat. 241 (1964).
[17] 42 U.S.C. § 2000e-2(a).
[18] Mich. Comp. Laws. §37.2202.
[19] 42 U.S.C.§ 2000e(k).
[20] 42 U.S.C § 12101 et seq.
[21] 20 U.S.C. §1681.
[22] Ala. Code §36-13-50.
[23] Ala. Code §36-13-52.