

## Trump rescinds Executive Order 11246

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President Lyndon B. Johnson signed [Executive Order 11246](#) in 1965. Since then, organizations doing business with the federal government had to affirmatively recruit women and minorities for employment and ensure employment practices did not discriminate on the basis of race, color, religion, sex, and national origin. Executive Order 11246 mandated that contractors develop annual affirmative action plans measuring their compliance with these objectives. Just like Title VII of the Civil Rights Act, Executive Order 11246 and its implementing regulations prohibited discrimination on the basis of race and sex, and protected men and non-minorities from discrimination to the same extent that it covered women and minorities.

Yesterday, President Donald J. Trump signed an Executive Order entitled “[Ending Illegal Discrimination and Restoring Merit-Based Opportunity.](#)” Among other things, this new Executive Order rescinds Executive Order 11246 and directs the Office of Federal Contract Compliance Programs to immediately stop

- Promoting “diversity.”
- Holding Federal contractors and subcontractors responsible for taking “affirmative action.”
- Allowing or encouraging Federal contractors and subcontractors to engage in workforce balancing based on race, color, sex, sexual preference, religion, or national origin.

The Executive Order provides that contractors “may continue to comply with the regulatory scheme” for a period of 90 days, or until April 21, 2025.

Going forward, executive agencies must require federal contractors “to agree that . . . compliance in all respects with all applicable Federal anti-discrimination laws is material to the government’s payment decisions” and “to certify that [the contractor] does not operate any program promoting DEI that violates any applicable Federal anti-discrimination laws.”

**What does the rescission of Executive Order 11246 mean for contractors?**

President Trump's revocation of Executive Order 11246 eliminates the OFCCP's authority to enforce it. This effectively nullifies the regulations that implement Executive Order 11246. Although we will need to let the dust settle and wait for announcements from OFCCP, here is what we expect to happen:

- The OFCCP will suspend all pending OFCCP compliance evaluations with respect to the portion of the audit pertaining to compliance with Executive Order 11246.
- The OFCCP will close all pending investigations of complaints alleging violation of Executive Order 11246.
- The OFCCP will abandon all litigation and administrative enforcement actions based on violation of Executive Order 11246.
- The OFCCP will not schedule any new compliance evaluations until its Scheduling Letter and Itemized Listing is updated to remove references to Executive Order 11246 (and this requires a period of notice and comment and then approval by the Office of Management and Budget).
- If the OFCCP continues to require annual certification in its [Contractor Portal](#), certification of compliance will be limited to Section 503 of the Rehabilitation Act and the Vietnam Era Veterans' Readjustment Assistant Act.

Arguably, the OFCCP could continue to investigate and enforce compliance matters that arose before the revocation of Executive Order 11246, but that approach seems extraordinarily unlikely in light of the President's directive.

Significantly, President Trump's Executive Order expressly requires contractors to comply with federal anti-discrimination laws. Whether or how this will be enforced remains to be seen.

It is also noteworthy that none of the requirements of Executive Order 11246 conflict with Title VII – both mandate equal employment opportunity and non-discrimination. Thus, nothing in the law prevents contractors from continuing to monitor their workforce diversity or evaluating their employment practices to ensure they are free from discriminatory effect. Even without the OFCCP's enforcement authority, all employers of course will continue to be subject to enforcement action from the U.S. Equal Employment Opportunity Commission and state fair employment agencies, and discrimination lawsuits filed by private litigants.

**What has not changed for contractors?**

The OFCCP will continue to enforce compliance with [Section 503 of the Rehabilitation Act](#) and the [Vietnam Era Veterans' Readjustment Assistance Act](#). These are laws enacted by Congress, and the President cannot unilaterally rescind or change duly enacted statutes. Thus, federal contractors will continue to have the following obligations (among others):

- Develop annual affirmative action plans for individuals with a disability and protected veterans.
- Recruit individuals with a disability and protected veterans.
- Solicit self-identification information regarding disability and veteran status from applicants and new hires.
- Remind employees at least every five years that they can self-identify as disabled at any time.
- List most job openings with the state unemployment agency.
- Ensure that all personnel involved in making employment decisions receive training regarding the organization's compliance obligations.
- Analyze workforce utilization of individuals with a disability by job group on an annual basis.
- Determine attainment of annual hiring benchmark for protected veterans.
- Calculate components of data collection analyses, such as number of disabled applicants and hires and number of protected veteran applicants and hires.

Constangy's [Affirmative Action/OFCCP Compliance practice group](#) will continue to monitor developments as this breaking news unfolds.

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