

Guidance for Defending IRA/IIJA Grant Agreements from Anti-DEI Attacks

**** last updated March 31, 2025**

I. Introduction and Summary

Since his inauguration, President Trump and officials in his Administration have repeatedly attacked various federal programs, especially those authorized by the Inflation Reduction Act ("IRA") and Infrastructure Investment and Jobs Act ("IIJA"), including the Environmental Protection Agency's Solar for All program and the Department of Energy's Home Energy Rebates program. In addition to rhetorical attacks, agencies have implemented so-called funding "freezes," issued orders to stop work on any activities related to "diversity, equity, and inclusion" ("DEI") and [notices](#) that finalized award agreements would be modified to remove DEI or Justice40-related activities, and purported to "cancel" or terminate award agreements and fire or place on administrative leave federal employees working on equity-related issues.

This memorandum discusses the **limits on the Executive branch's ability to require changes to existing, finalized and executed award agreements** and the importance of **awardees continuing to meet the terms of these agreements as well as other legal requirements**. In general, award agreements should not be renegotiated unless the law is changed and there is a legal requirement to modify the agreement. Awardees should also not rely on the Administration's empty promises not to enforce certain requirements. Awardees should carefully follow all the terms and conditions of their agreement and document their compliance.

What Awardees Should Do Now:

- Make sure that you understand your obligations under your award agreement;
- Ensure that you comply with all terms and conditions of your award agreement;
- Document all your work demonstrating compliance with the terms and conditions of your award agreement, as well as communications with the relevant federal agency contacts;
- Successfully execute your obligations under your award agreement as soon as feasible;
- Consult with your own legal counsel for specific advice tailored to your project. (For states, this should likely include the Attorney General office);
- **Do not** agree to modifications to any provisions of your agreement at this time, because:
 - Under federal law governing federal financial assistance (including grants), agencies can only terminate agreements based on provisions included in the agreement's terms and conditions.
 - Award agreements were developed to be consistent with the law, statutory mandates, and the relevant agency guidance that designed the program. Removing provisions from these agreements may raise new legal concerns.
- Continue to monitor developments related to these issues as relevant litigation progresses.

II. Factual Background

A. Executive Orders

Starting on the first day of his second term, President Trump began issuing a flurry of Executive Orders ("EOs"), which initiated a series of actions resulting in what the Administration has called a "freeze," "pause," or "manual review" of various federal funding programs. President Trump also signed Executive Orders targeting DEI programs and environmental justice programs. A brief summary of the Executive Orders that may impact the Department of Energy ("DOE") and the U.S. Environmental Protection Agency's ("EPA's") grants are summarized briefly below.¹

1. Anti-DEI EOs:

On January 20, 2025, President Trump issued Executive Order 14151, titled "[Ending Radical and Wasteful Government Programs and Preferencing](#)." This order calls for an end of all DEI programs and for terminating, "to the maximum extent allowed by law," all "equity-related grants and contracts." Some agencies have already taken actions related to this Executive Order, including (but not limited to):

- On January 27, DOE sent a [memo](#) citing this EO to grant recipients and subrecipients directing them to "cease any activities, including contracted activities, and stop incurring costs associated with DEI and [Community Benefits Plan] activities." The memo indicated that recipients with DEI and CBP activities in their awards would be contacted "to initiate award modifications consistent with this order."
- On January 31, citing the same EO, the Small Business Administration [reportedly](#) sent notices to all grant recipients, directing them to "immediately cease conducting and reporting under any DEI or DEIA mandates, policies, programs, preferences, or activities required by their awards." On February 24, Administrator Loeffler affirmed that grants "that do not comply" with various EOs were already "paused." As of March 27, this does not appear to have been rescinded or superseded by any further guidance from SBA.
- Similar notices have been issued from other agencies and offices, including the [Department of Labor](#) ([rescinded](#) on February 27) and [Health Resources and Services Administration](#) ([rescinded](#) on February 5).

On January 21, 2025, President Trump signed Executive Order 14173, titled "[Ending Illegal Discrimination and Restoring Merit-Based Opportunity](#)." This order requires all contracts and grant awards to include a certification stating that "compliance in all respects with all applicable Federal anti-discrimination laws is material to the government's payment decisions." It also directs federal agencies to identify targets for civil investigations into "illegal DEI."

¹ A more complete discussion of the executive orders and their impacts is available here <https://theequityfund.org/policy-resources/>.

2. Anti-"Green New Deal" / Funding Freeze EO:

In January, 2025, President Trump signed Executive Order 14154 titled "[Unleashing American Energy](#)." This order establishes a policy to encourage fossil-fuel energy production and exploration on Federal lands and waters and to eliminate the "green new deal" funding. Section 7 of the order directs all federal agencies to "immediately pause the disbursement of funds" under the IRA and Bipartisan Infrastructure Act ("BIL" also known as the Infrastructure Innovation and Jobs Act ("IIJA"). It requires agencies to report to the Office of Management and Budget ("OMB") in 90 days how the spending aligns with the President's energy goals. As context, the majority of IRA and BIL funding was obligated during the Biden Administration.

B. Ongoing Litigation

1. Anti-DEI Provisions Subject of a Nationwide Preliminary Injunction

On February 3, 2025, the city of Baltimore, restaurant workers, and higher education groups filed a [lawsuit in federal court](#) challenging the anti-DEI Executive Orders as unconstitutional and exceeding presidential authority. [On February 21, 2025, a federal judge blocked substantial portions of the anti-DEI Executive Orders](#), finding that they were unconstitutionally vague and constituted viewpoint discrimination. Specifically, the preliminary injunction issued by the District of Maryland applies on a nationwide² basis, including "similarly situated non-parties," and prohibits the Administration from taking the following actions related to the various challenged provisions:

- Termination Provision:³ Pausing, freezing, impeding, blocking, canceling or terminating any current award contract or obligation, or changing the terms of any current award or contract based on the Termination Provision in EO 14151;
- Certification Provision:⁴ Requiring grantees to make any "certification" related to not operating any programs promoting DEI;
- Enforcement Threat Provision: Bringing any False Claims Act enforcement action premised on any certification made pursuant to the Certification Provision, or other enforcement action, pursuant to the Enforcement Threat Provision.

² The district court analyzed whether the injunction should be nationwide and found that the Anti-DEI Executive Order provisions "are unconstitutionally vague as to all contractors and grantees who are subject to them" and other provisions "are content- and viewpoint-based restrictions that chill speech as to anyone the government might conceivably choose to accuse of engaging in speech about 'equity' or 'diversity' or 'DEI'..." *National Assn. of Diversity Officers in Higher Education v. Trump*, No. 1:25-cv-00333 (D.Md. Feb. 21, 2025) Opinion at 61.

³ The "Termination Provision" refers to § 2(b)(i) of EO 14151, which directs agencies, departments, or commission heads to "terminate, to the maximum extent allowed by law, ...all... 'equity-related' grants or contracts." *Id.*

⁴ The "Certification Provision" refers to § 3(b)(iv) of EO 14173, which directs agencies to "include in every contract or grant award" terms requiring the counterparty or grant recipient (1) "to agree that its compliance in all respects with all applicable Federal anti-discrimination laws is material to the government's payment decisions for purposes of" 31 U.S.C. § 3729(b)(4) (citing to the definition of "material" within the False Claims Act); and (2) "to certify that it does not operate any programs promoting DEI that violate any applicable Federal anti-discrimination laws." *Id.*

District Court Judge Abelson found that plaintiffs demonstrated a substantial likelihood to succeed in their First and Fifth Amendment claims regarding free speech and due process vagueness, respectively, noting that the anti-DEI Executive Orders were “textbook viewpoint-based discrimination.” On March 10, Judge Abelson granted plaintiffs’ motion to clarify the court’s February 21 preliminary injunction, [specifying](#) that the order applies to “all other federal executive branch agencies, departments, and commissions, and their heads, officers, agents, and subdivisions directed pursuant to the” anti-DEI EOs, not just the named defendants. On [March 14](#), the Fourth Circuit Court of Appeals stayed the nationwide preliminary injunction pending appeal, meaning that the federal government may again enforce the Certification, Enforcement Threat, and Termination provisions in the Anti-DEI EOs. The appeal at the Fourth Circuit is on an expedited schedule, with the federal government’s brief due by April 8 and the plaintiffs’ response due on May 8, 2025. Given the significant uncertainty related to how this will be resolved, it is recommended that grantees not amend grants at this time.

In addition, various other challenges to the anti-DEI EOs have been filed, including by the [National Urban League](#) and various other nonprofit organizations in the District Court of the District of Columbia and [Chicago Women in Trades](#) in the District Court of the Northern District of Illinois.

2. Funding Freeze Provisions Subject to an Injunction

Two federal district courts have required the Administration to release “frozen” funds that have already been obligated. On January 31, the U.S. District Court for the District of Rhode Island granted a [temporary restraining order](#) (“TRO”) prohibiting the Trump Administration from “giving effect to the OMB Directive” with respect to financial assistance to 23 states and requiring the [issuance of notice](#) to federal agencies of this court order. On February 10, the Court issued an [order](#) to enforce the January 31 TRO, following [voluminous evidence](#) that awardees still could not access funding. The Trump Administration attempted to reinstate the funding freeze, but the 1st Circuit Court of Appeals [denied the request on February 11](#). On February 28, the plaintiff States filed a [second motion](#) to enforce the Rhode Island District Court’s TRO, providing further [evidence](#) that funds for grants administered by agencies including DOE, Department of Homeland Security, and the Federal Emergency Management Agency (“FEMA”) remain inaccessible. On March 6, Judge McConnell issued a [preliminary injunction](#), enjoining the federal government from “pausing, freezing, blocking, canceling, suspending, terminating, or otherwise impeding the disbursement of appropriated federal funds to the States under awarded grants, executed contracts, or other executed financial obligations based on the OMB Directive or any other materially similar order, memorandum, directive, policy, or practice under which the federal government imposes or applies a categorical pause or freeze of funding appropriated by Congress.” Further motions have since been filed specific to FEMA grants, which remain inaccessible, according to the States, while the Trump Administration maintains they are undergoing a permissible “manual review.” The Administration has appealed to the First Circuit Court of Appeals, which on March 27 [declined to stay](#) the preliminary injunction pending appeal.

On February 3, the U.S. District Court for the District of Columbia [granted another](#) TRO of the OMB’s freeze on federal grant disbursements. On February 25, in the same

case, the D.C. District Court issued a [preliminary injunction](#) blocking the blanket freeze⁵ and ordering that written notice of this order be given to federal agencies.

In addition, the Governor of Pennsylvania filed a separate [lawsuit](#) to release the frozen state funding, and [announced](#) that all of the Commonwealth's federal funding had been restored as of February 24.

C. Mass Termination Notices

Despite the panoply of TROs and preliminary injunctions ordering the Trump Administration to stop blocking the disbursement of grants, from February 14 through March 10, EPA Administrator Lee Zeldin [announced four rounds of](#) grant "cancellations" in partnership with the so-called "Department of Government Efficiency" ("DOGE"), touting large dollar amounts "cut" but failing to identify which grants were targeted.⁶ Moreover, [EPA emails revealed](#) by the Democratic members of the Senate Environment and Public Works Committee show that EPA staff knowingly and deceptively included in termination notices language not present in awardees' terms and conditions as justification, with the intention of shifting the burden to awardees to bring challenges in the disputes process or via litigation.

III. Executive Orders and Agency Directives Cannot Require Contract Re-Negotiation

A. General Limitations of Executive Orders and Actions

Executive actions taken by the President of the United States are limited by the scope of the President's powers within the Constitutional structure that apportions power among the executive, legislative, and judicial branches. Executive Orders and similar issuances from the Executive Office of the President, such as Presidential Memoranda, cannot override this separation of powers established by the Constitution. By itself, an Executive Order does not have the power to modify or invalidate Congressional enactments, including appropriations. An Executive Order also cannot effect a revision of regulations promulgated by an agency and codified in the Code of Federal Regulations. Most importantly, Executive Orders cannot abridge Constitutional rights such as the First Amendment's protection of the freedom of speech, as well as due process and equal protection rights protected by the Fifth and Fourteenth Amendments.

Grant awards are formalized as legally binding agreements between the federal government and the awardee, which are governed by contract law. As long as an awardee

⁵ Specifically, the Court ordered that the Trump Administration is prohibited from "implementing, giving effect to, or reinstating under a different name the unilateral, non-individualized directives in OMB Memorandum M-25-13 with respect to the disbursement of Federal funds under all open awards." *Nat'l Council of Nonprofits v. Off. of Mgmt. and Budget*, No. 1:25-cv-00239 (D.D.C. Feb. 25, 2025) Order at 1.

⁶ Some of these "cancelled" grants have been uncovered via [leaks](#) to the Democratic members of the Senate Environment and Public Works Committee and a Freedom of Information Act [request](#) filed by the Sierra Club.

fully complies with all the material terms and conditions of their award, the federal government remains obligated to uphold their end of the bargain and bound to the terms and conditions of the agreement. The executive branch has no inherent power to “cancel” or unilaterally modify contracts. Any attempt by either party to terminate or modify a contract is governed by the contract’s terms.

Any unilateral attempt to withhold legally obligated funds for policy reasons would also likely violate the Impoundment Control Act. Presidents do not have power to unilaterally override spending laws and deny enacted funding through [impoundment](#).

B. Requirements Under Federal Regulations

Federal regulations promulgated to govern federal financial assistance provide further protections to awardees, subrecipients, and contractors. The principal regulations generally applicable to federal financial assistance, including grants, loans, and loan guarantees, to non-federal entities are known as the “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards,” or “Uniform Guidance,” found at 2 C.F.R. Part 200.⁷

The following regulations are of particular relevance to the Trump Administration’s purported attempts to “pause” disbursements and terminate or modify awards.⁸ As described below, federal regulations require that new conditions may not be added after an awardee has already accepted the funds. The regulations also require that awards may not be terminated for reasons not specifically articulated by law or in the terms and conditions entered into by state and federal agencies.

- [2 C.F.R. § 200.300\(a\)](#) requires agencies to manage and administer awards to ensure they are in “full accordance with the U.S. Constitution, applicable Federal statutes and regulations—including provisions protecting free speech, religious liberty, public welfare, and the environment, and those prohibiting discrimination—and the requirements of” Part 200. Agencies are further required to communicate to the awardee “all relevant requirements... and incorporate them directly or by reference in the terms and conditions of the Federal award.”
 - *The federal government cannot require an awardee to do anything that would violate federal law, including civil rights statutes preventing discrimination, appropriations enacted by Congress, and protections provided by the Constitution.*

⁷ Most federal agencies have adopted this Uniform Guidance, with some adopting specific adaptations for certain sections. Program-specific exceptions to this general application are listed at 2 C.F.R. § 200.101(e), including entitlement programs like Medicaid, Temporary Assistance for Needy Families, the Children’s Health Insurance Program, and the National School Lunch Program.

⁸ These regulations apply to awards which have been finalized, meaning that the grant agreement or cooperative agreement setting out the terms and conditions of the federal financial assistance have been fully executed. Thus, this discussion does not apply to entities that have been selected for an award but have not yet executed such an agreement, or entities that have applied or are interested in applying for an award. In addition, other requirements may be established by specific agencies; for example, the Department of Energy has promulgated additional requirements at 2 C.F.R. Part 910, which largely entail additions related to for-profit entities.

- [2 C.F.R. § 200.301\(a\)](#) provides that agencies should “establish program goals and objectives during program planning and design,” before the award is made, and that they should also “clearly communicate the specific program goals and objectives in the Federal award.” Section [200.202](#), which is referenced in this section, further provides that a federal agency must design a program “[w]ith clear goals and objectives that provide meaningful results and be consistent with the Federal authorizing legislation of the program.”
 - *These sections require a federal agency to design a program consistent with the authorizing legislation and provide that the agency should include clear goals and objectives in the federal award.*
- [2 C.F.R. § 200.305\(a\)](#) identifies other authorities that govern payments to States, including procedures established to govern certain federal assistance programs, at [31 C.F.R. Part 205](#) and the [Treasury Financial Manual \(TFM\) 4A-200](#).
 - In addition, [29 C.F.R. Part 1470](#) provides similar uniform requirements applicable to certain grant agreements with state and local governments.⁹ For example, [29 C.F.R. § 1470.43](#) describes remedies for noncompliance, including temporarily withholding payments “pending correction of the deficiency” or suspending or terminating the award in whole or in part. [Section 1470.44\(a\)](#) provides that awards may be terminated “for convenience” by the agency only with the awardee’s consent.
- [2 C.F.R. § 200.305\(b\)](#) establishes various requirements for payments to awardees other than States, including that “payment methods must minimize the time elapsing between the transfer of funds from the Federal agency ...and the disbursement of funds by the recipient or subrecipient.”
 - Section 200.305(b)(1) provides that awardees other than States “must be paid in advance” if they maintain or demonstrate the willingness to maintain written procedures that allow for the prompt disbursement of funds after receiving payment and financial management systems that meet regulatory fund control and accountability standards. Under certain conditions described in (b)(3), reimbursement is the preferred payment method, including when a specific condition is established per [§ 200.208](#), when the reimbursement method is requested by the awardee, or when the award is for construction. If the reimbursement method is used, then the federal agency “must make payment within 30 calendar days after receipt of the payment request” unless the agency “reasonably believes the request to be improper.”
 - Section 200.305(b)(6) specifies that federal agencies must not withhold payments for allowable costs during the period of performance “unless required by Federal statute, regulations, or if the awardee “has failed to comply with the terms and conditions of the Federal award” or is “delinquent in debt to the United States” as defined by OMB Circular A-129.

⁹ These regulations are not applicable to many “entitlement” grant programs and “block grants,” including Medicaid and the Low-Income Home Energy Assistance Program (LIHEAP), as well as exceptions authorized by OMB or affected agencies. [29 C.F.R. § 1470.6](#).

- If a payment is withheld for failure to comply with the award's terms and conditions, it "must be released ...upon subsequent compliance."
 Suspension of an award requires payment adjustments as governed by [§ 200.343](#).
- *An agency cannot delay reimbursing an awardee longer than 30 days if an awardee is in compliance with the terms and conditions of the agreement. If the awardee fails to comply with terms and conditions, the agency must release any withheld funds if the awardee later comes into compliance.*
- [2 C.F.R. § 200.339](#) provides remedies available to agencies if an awardee fails to comply with the U.S. Constitution, federal statutes or regulations, or the terms and conditions of the award. In such cases, agencies may impose additional conditions per [§ 200.208](#).¹⁰ If the agency determines that the imposition of additional requirements cannot remedy the noncompliance, then the agency may take one or more of various actions, including temporarily withholding funds or suspending or terminating the award in whole or part.
 - *An agency cannot withhold funds for agreements under this section for purely policy reasons. Withholding funds must be tied to noncompliance with a term or condition of the award, or with the U.S. Constitution, federal statutes, or regulations.*
- [2 C.F.R. § 300.340](#) provides various requirements governing the termination of awards, including the circumstances under which an award may be terminated and reporting required of the agency.
 - Section 300.340(b) requires that the federal agency "must clearly and unambiguously specify all termination provisions in the terms and conditions of the Federal award."
 - *Agencies can only terminate an award consistent with the termination provisions specified in the award agreement.*
 - 2 C.F.R. § 300.340(a)(4) provides that an agency may terminate an award "pursuant to the terms and conditions of the Federal award, including, to the extent authorized by law, if an award no longer effectuates the program goals or agency priorities." (Emphasis added.) This provision, however, is limited in its applicability for the following reasons:
 - The terms and conditions of awards finalized after October 1, 2024 likely do not allow for termination if they later become inconsistent with agency priorities (for example, following a change in presidential administration).
 - Grants awarded pursuant to specific Congressional enactments or appropriations, such as IRA and IIJA, were designed to be consistent with statutory goals, and an agency directive (or Executive Order issued by the President) cannot undo statutory authorization.
 - Award agreements that were finalized before October 1, 2024 were subject to a slightly different language in the termination provision

¹⁰ This section addresses specific conditions of awards, and provides that an agency may adjust such conditions "as needed, in accordance with this section, based on an analysis of [various] factors."

and Uniform Guidance, allowing an agency to terminate an award “to the greatest extent authorized by law, if an award no longer effectuates the program goals or agency priorities.”¹¹ This language differs from the language adopted in the terms and conditions and Uniform Guidance effective October 1, 2024, in that it does not predicate the termination on the terms and conditions of the agreement.¹² However, some awards that were finalized before October 1, 2024, may have had their terms and conditions amended subsequent to that date to include the newer language. Arguably, the Administration should not be able to rely solely upon this provision to terminate valid award agreements, as other provisions within the Uniform Guidance require that the goals of the program be clearly communicated during the pre-award phase of program planning and design.¹³

*** Awardees should review, with their own legal counsel, the termination and other provisions contained in the terms and conditions of their award agreements, including any amendments, to ensure that awardees understand potential risks. On March 25, 2025, EPA updated its [general terms and conditions](#) to include, among other changes, the termination language from before October 1, 2024 and the assertion that this language applies to “all new awards and funding amendments (incremental and supplemental) made on or after March 25, 2025.” While these changes were quietly reversed without explanation on March 28, awardees should carefully review any amendments presented by EPA (or other agencies) going forward.

Courts have also found that agencies cannot unilaterally impose new conditions after the award agreement has been executed. Once a State has accepted funds pursuant to a federal spending program, the Federal government cannot alter the conditions attached to those funds so significantly as to “accomplish[] a shift in kind, not merely degree.” *Nat’l Fed’n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 583-84 (2012). Further, whatever conditions Congress imposes on states’ receipt of funds implicates Tenth Amendment anti-commandeering concerns and must be “reasonably related to the purpose of the expenditure.” *New York v. United States*, 505 U.S. 144, 172 (1992) (citing *Mass. v. United States*, 435 U.S. 444 (1978)).

IV. Application of Anti-DEI EOs to Justice40 Programs

A. Limitations of EOs Purporting to Require Removal of DEI and Justice40 Programs

1. DEI

Section 2 of EO 14151 purports to direct the termination of DEI programs, while section 3(c)(ii) of EO 14173 directs OMB to “[e]xcise references to DEI and DEIA principles.” Through these anti-DEI EOs, the Administration essentially argues that diversity, equity and inclusion programs and activities amount to discrimination. This argument is factually, and legally, wrong. Civil rights laws and regulations set clear

¹¹ [Guidance for Grants and Agreements](#), 85 Fed. Reg. 49506, 49559 (Aug. 13, 2020).

¹² [Guidance for Federal Financial Assistance](#), 89 Fed. Reg. 30046, 30089 (Apr. 22, 2024).

¹³ 2 C.F.R. §§ [200.202](#) and [200.301](#).

requirements related to protecting historically marginalized populations, and DEI language and programs do not violate these laws.¹⁴

As discussed above, federal regulations governing financial assistance (including grant awards) already restrict the terms and conditions in award agreements. Furthermore, DEI programs or language do not violate the law. In fact, promoting diversity, equity and inclusion generally helps ensure that schools, workplaces, and other entities comply with both Constitutional and statutory anti-discrimination protections. The Attorneys General from 16 states issued a [statement](#) summarizing why DEI policies are not illegal, and may even be required to comply with the law. In addition, as discussed above, a federal court had issued a nationwide preliminary injunction blocking the enforcement of key provisions of the anti-DEI EOs, finding that they likely violated Constitutional protections of free speech and are impermissibly vague. While this injunction was temporarily stayed by the Fourth Circuit Court of Appeals, the Circuit Court panel did not uphold on their merits the actions taken by agencies to implement these provisions. [Order](#), *Nat'l Ass'n of Diversity Officers in Higher Educ. v. Trump*, No. 25-1189 (4th Cir. Mar. 14, 2025). Finally, award agreements were written to be consistent with their authorizing statutory provisions and the agency guidance that designed the program. Removing or modifying DEI-related language or provisions may render the award agreement inconsistent with statutory requirements or implementing agency guidance, which may in turn raise further legal concerns. In addition to the baseline federal civil rights protections that apply nationwide, some states may have additional protections that may be implicated by changes to award agreements.

Awardees may also be asked or directed to include new language related to anti-discrimination. States and other awardees are not required to comply with any request to include new terms in an agreement related to anti-discrimination, because all federal grant agreements were already required to comply with anti-discrimination law already, so additional language is likely unnecessary.

2. Justice40

The Justice40 Initiative, which was first established by Biden's Executive Order 14008, was rescinded twice by the Trump Administration, in both Executive Order 14148¹⁵ and EO 14173. Although Justice40 is no longer in force under this Administration, it was a crucial policy that was used to inform the development of relevant award agreements and agency guidance and requirements.

As such, Justice40 requirements, which largely require prioritizing the provision of benefits to disadvantaged and low-income communities, are often reflected in the terms and conditions of the award agreements themselves. However, as previously discussed, the anti-DEI Executive Orders¹⁶ cannot by themselves change an award agreement that

¹⁴ See <https://app.box.com/s/2me4mszr6p4oinnucw8i4imb8d7570kp> (a memorandum compiled by law professors summarizing why DEI language and programs are not illegal and in fact may be required to comply with the law).

¹⁵ [Initial Rescissions of Harmful Executive Orders and Actions](#), 90 Fed. Reg. 8237 (Jan. 20, 2025).

¹⁶ Section 2(b) of EO 14151 attempts to terminate all "environmental justice" offices and positions and "equity-related" grants and directs the creation of a list of all grantees who received Federal funding to provide or advance environmental justice-related programs, services, or activities.

was already finalized. It is critical to continue to comply with all requirements of the agreement unless changes are legally required. In addition to the award agreement's incorporation of Justice40 considerations, agency program guidance for many EPA and DOE IRA and IIJA programs also embedded Justice40 principles. Unless this program guidance is rescinded through a legally valid process, it is still controlling. Finally, several IRA programs, including EPA's Solar for All program and DOE's Home Energy Rebates program, were authorized by statutory language that requires targeting activities toward certain communities and the agency's relevant program guidance affirms this focus. An executive order or agency action cannot change or override statutory language.

B. Overview of Laws and Agency Guidance Related to IRA DOE Rebate Programs

Sections 50121 and 50122 of the IRA authorize DOE to administer the Home Efficiency Rebates Program and the Home Electrification and Appliance Rebates Program, respectively.

The Home Efficiency Rebates Program, authorized by IRA section 50121 and codified at 42 U.S.C. § 18795, requires the inclusion of several requirements in a state's rebate plan, including: procedures for determining the resulting reductions in energy use from projects; a certification process by contractors related to that reduction; and providing additional amounts to contractors for completing projects in homes located in disadvantaged communities. It also sets forth maximum rebate amounts and authorizes state energy offices to seek the Energy Secretary's approval to increase rebate amounts for rebates to low- and moderate-income households, as well as how the money is allocated to states, and it requires the Secretary to distribute funds allocated to state energy offices if their applications are approved.

The Home Electrification and Appliance Rebates Program, authorized by IRA section 50122 and codified at 42 U.S.C. § 18795a, establishes a separate rebate program to be implemented by states, with a focus on electrification projects, including upgrading appliances and electrical wiring. The statutory language sets maximum rebate amounts and limits the availability of these rebates to low- and moderate-income households or multi-family buildings where at least 50 percent of the residents are low- or moderate-income. In other words, Congress required that this rebate program must target low- and moderate-income households. Congress also required a specific method for allocating funds to state energy offices, and required the Energy Secretary to distribute those funds if state applications are approved.

Thus, Congress provided specific statutory directions requiring that the DOE distribute funds to state energy offices to carry out both rebate programs, which clearly contemplate specific targeting to disadvantaged communities and low- and moderate-income households. As discussed in section III.B, above, the Uniform Guidance regulations impose further requirements on DOE. 2 C.F.R. § 200.202 establishes various requirements for how agencies must design a program, including ensuring programs are designed "[w]ith clear goals and objectives that provide meaningful results and [are] consistent with the authorizing legislation of the program." DOE is further required to "measure performance based on the goals and objectives developed during program planning and design." Finally, under this section, a federal agency, like DOE, should

"develop programs in consultation with communities benefiting from or impacted by the program."

On July 27, 2023, following a public notice and comment period, DOE issued guidance governing both rebate programs, including an Administrative and Legal Requirements Document ("ALRD") and Program Requirements and Application Instructions ("Program Requirements"), that established baseline requirements for the rebate programs.¹⁷ To date, this guidance has not been replaced, and thus remains the applicable, controlling program guidance. DOE's guidance describes program outcomes and requirements related to low-income households and disadvantaged communities, underrepresented businesses, and community benefits under the rebate programs, including:

- *Prioritizing Low-Income Households and Disadvantaged Communities:* The Program Requirements provides the "overarching program outcomes" for both rebate programs, including: "Widespread access and uptake for disadvantaged communities." The Program Requirements further highlight how the statutory language in IRA Section 50121 provides larger rebate amounts for single-family homes occupied by low-income households, as well as "incentives to encourage contractors and aggregators to serve disadvantaged communities. The inclusion of these statutory components demonstrates the importance of ensuring low-income households and communities have access to rebates as an integral part of a Section 50121 program's design."¹⁸ Under the Program Requirements, state programs must allocate a percentage of rebate funds "in line with its percentage of low-income households," or approximately 40 percent of each state's allocations for each program, to low-income households and an additional 10 percent of funds to low-income multifamily buildings.
- *Incorporating Diversity, Equity, Inclusion and Accessibility (DEIA) By Partnering with Underrepresented Businesses:* The Program Requirements establish that states must create a Community Benefits Plan ("CBP") that describes how the rebate programs support the goals of supporting meaningful community and labor engagement, engaging and supporting a skilled and qualified workforce, advancing DEIA, and contributing to the Justice40 initiative goal that 40 percent of benefits of certain federal investments "flow to disadvantaged communities." Moreover, the CBP "must include a section describing how DEIA objectives will be incorporated into the program. The section should detail how the State will partner with underrepresented businesses and training organizations that serve workers who face barriers to accessing quality jobs and/or other project partners to help address DEIA."¹⁹
- *Description of How Disadvantaged Communities Will Benefit from Rebate Programs:* According to the Program Requirements, a state plan must describe

¹⁷ DOE, State & Community Energy Programs, Inflation Reduction Act Home Energy Rebates, "[Administrative and Legal Requirements Document](#)" ("ALRD," version 2.1, December 16, 2024) and "[Program Requirements and Application Instructions](#)" ("Program Requirements," July 27, 2023). See also <https://justsolutionscollective.org/doe-guidance-for-home-energy-rebates-adopts-recommendations-for-equity/> (summarizing provisions of the guidance).

¹⁸ Program Requirements, *id.* at 15 (internal citations omitted).

¹⁹ *Id.* at 18-21.

actions the state will take to ensure that disadvantaged communities will receive direct benefits, like cost savings or pollution reduction, and economic benefits, "including the jobs and quality of jobs supported by rebate investments and the contracts and economic activity enabled by rebates."²⁰

The Administration cannot require awardees to rewrite agreements to conflict with these statutory and agency program requirements. As described above, the program's performance measurement must be based on the goals and objectives developed during program planning and design. Any potential amendments to an award after the program was designed must be considered in light of how they would interact with established goals, objectives, and performance metrics. Awardees and other stakeholders should also be alert to potential updates or revisions to program guidance.

C. Overview of Laws and Agency Guidance Related to Solar for All

The Solar for All program was created by Congress as part of the Greenhouse Gas Reduction Program in section 60103 of the IRA, codified at 42 U.S.C. § 7434. Congress established several key requirements for the program, including:

- *Overall Purpose of Program:* The purpose of the Solar for All program is to provide grants, loans, or other forms of financial assistance, as well as technical assistance, to enable the deployment of zero-emission technologies.
- *Must Benefit Low-Income and Disadvantaged Communities:* Congress appropriated \$7 billion for grants to provide financial and technical assistance to "enable low-income and disadvantaged communities to deploy or benefit from zero-emission technologies and to carry out other greenhouse gas emission reduction activities."
- *Limited to Zero-Emission Technologies:* Zero-emissions technologies is defined as "any technology that produces zero emissions of...any [criteria] air pollutant...or any precursor to such an air pollutant....[and] any greenhouse gas." 42 U.S.C. § 7434(b)(4). The statutory language specifies that this includes distributed technologies on residential rooftops.
- *Prioritize Projects that Need Assistance:* The statutory language further provides that an awardee shall provide financial assistance to qualified projects and "prioritize investment in qualified projects that would otherwise lack access to financing." 42 U.S.C. § 7434(b).
- *Provide Technical Assistance, Which EPA Interpreted to Include Workforce Development:* The statute allows for the provision of "technical assistance," which includes assistance "to enable low-income and disadvantaged communities to deploy or benefit from zero-emission technologies...." 42 U.S.C. § 7434(a)(1). EPA has interpreted "technical assistance" to include "services and tools" to help "distributed solar developers and contractors" overcome "non-financial barriers to solar deployment," which may describe many kinds of workforce development activities.²¹

²⁰ *Id.* at 21.

²¹ EPA, "[Frequent Questions about Solar for All](#)," (last updated Feb. 25 2025).

These statutory requirements set the baseline framework for the Solar for All program and cannot be changed by an executive order or any agency action or regulation. In other words, by law, these programs must be targeted to low-income and disadvantaged communities, apply to only zero-emission technologies, and prioritize projects that most need assistance. The Administration cannot change these requirements without an act of Congress.

EPA's program design and guidance for Solar for All further develops these requirements by defining what constitutes a disadvantaged community and which technologies qualify as zero-emission.²² EPA's guidance also includes requirements for workforce development; EPA stated that it would evaluate how labor and workforce development goals would be achieved as part of its competitive application evaluation process.²³ In its Request for Applications, EPA included the following:

- "To meet the labor needs of the rapidly growing solar industry, you should propose workforce training models that prepare individuals from low-income disadvantaged communities for middle-class career pathways in partnership with workforce partners."²⁴
- "[T]his program aims to expand workforce opportunity for underserved communities (as defined by the Good Jobs Initiative) who often face disproportionate barriers to training and employment."²⁵
- "Applicants are encouraged to proactively determine how they will work with contractors that are committed to "high road" labor practices, such as paying at least the prevailing wage, providing family-sustaining benefits, providing predictable work schedules, paid time-off, retirement contributions, safe and healthy working conditions, providing supportive services to those who need them, and other characteristics of a good job."²⁶

This program design and guidance was issued after multiple public input opportunities, including a notice and comment period. This guidance has not been replaced by any other agency guidance and to date, EPA has not opened a new notice and comment process or otherwise taken the necessary steps to redesign the program. In addition, given that Solar for All awards were required by Congress to be disbursed by 2024, it is not clear if EPA could even legally redesign the program now if it desired to do so. Therefore, the existing guidance remains in force as the applicable agency guidance.

***** This memorandum does not constitute legal advice, and it does not replace the need to consult a lawyer for specific legal advice tailored to an agreement or project.***

²² *Id.* (describing EPA's guidance on how a disadvantaged community is defined).

²³ *Id.*

²⁴ EPA, "[Solar for All Request for Applications](#)," at 46.

²⁵ *Id.* at 81.

²⁶ *Id.*

Additional Resources:

[Fund Protection Clinic by Lawyers for Good Government](#) - A pro-bono legal clinic for federal grantees that can answer legal questions related to grants and awards.

[Trump's Executive Orders 2025](#) - A summary of some of the relevant executive orders and an overview of their impact.

[University Offices of General Counsel Memo: DEI Programs Are Lawful Under Federal Civil Rights Laws and Supreme Court Precedent](#) - A memorandum by law professors summarizing why DEI language and programs are not illegal and in fact may be required to comply with the law.

[Conditioning Federal Grant Awards: Understanding Grant Agreements, Amendments, and Terminations](#) - A brief report from the Congressional Research Service discussing general and specific terms and conditions included in grant agreements, as well as amendment or termination of these agreements.

[L4GG Guidance Brief: DEI/DEIA or Termination, Amendment & Certification](#) - Guidance from Lawyers for Good Government discussing considerations for when awardees receive notices from agencies regarding termination, requests to amend, and mandates to certify compliance with anti-DEI EOs.