



## CHANGE Legal Update 7

### Advice to US Foreign Assistance Recipients on Answering Enquiries about Compliance with DEI/DEIA and “Gender Ideology Extremism” Executive Orders

March 6, 2025 | prepared by Brook Baker, Health GAP Senior Policy Analyst

On January 20 and 21, Donald Trump issued a series of three Executive Orders<sup>1</sup> that aim to eliminate speech and action to support “diversity, equity, inclusion, and accessibility” (DEIA) and recognize and protect the rights of transgender people. These executive orders direct government agencies to cut funding any grantee or contractor, including non-governmental entities, private sector companies and non-profit organizations and UN and multilateral agencies, that express views in support of DEIA or the recognition of the existence and rights transgender people. They further mandate that all recipients of US-government funding must certify that they do not support DEIA or “extreme gender ideology.” Some recipients of USAID, CDC, and State Department funding are now being asked to respond to a questionnaire that asks whether they are in compliance with these executive orders. These executive orders are currently being legally challenged by US-based organizations as outlined in CHANGE Judicial Update No. 6. This memo provides an overview of the challenges and guidance to organizations about how to respond to the survey.

#### DEIA

On February 21, a federal court in Maryland issued a nationwide preliminary injunction<sup>2</sup> against three elements of the [executive orders on DEIA](#), including the provisions related to pausing, freezing, impeding, blocking, cancelling or terminating any awards, or requiring any certification or other representation they do not operate any programs promoting DEIA that violate any

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<https://www.whitehouse.gov/presidential-actions/2025/01/ending-radical-and-wasteful-government-dei-programs-and-preferencing/>,

<https://www.whitehouse.gov/presidential-actions/2025/01/ending-illegal-discrimination-and-restoring-merit-based-opportunity/> and

<https://www.whitehouse.gov/presidential-actions/2025/01/defending-women-from-gender-ideology-extremism-and-restoring-biological-truth-to-the-federal-government/>

2

<https://www.courtlistener.com/docket/69607847/45/national-association-of-diversity-officers-in-higher-education-v-trump/>

applicable Federal anti-discrimination laws. Importantly, the accompanying decision<sup>3</sup> noted that the vagueness of the orders, including the lack of definition or what constitutes illegal DEIA programs, leaves recipients of funding “with no idea whether the administration will deem their contracts or grants, or work they are doing, or speech they are engaged in, to be ‘equity-related.’” It further notes that they are “at a loss for whether the administration will deem a particular policy, program, discussion, announcement, etc. to be among the “preferences, mandates, policies, programs, and activities” the administration now deems “illegal.” While the preliminary injunction has been appealed, it is still currently in effect.

Given the lack of clarity about what it would take to comply with the executive order, given that they have not provided a definition of what illegal DEIA activities would be, and the preliminary injunction, **we would advise answering that you are reserving your rights pursuant to the court TRO, but that you are in compliance with all lawful authority anti-discrimination policy. Suggested language is:**

**We are aware that the DEI/DEIA Executive Orders upon which these questions are based have been temporarily enjoined on multiple grounds including unconstitutional vagueness. While reserving our rights to protection from enforcement of the enjoined DEI/DEIA Executive Orders, we assert that our provision of services to people and populations based on their health needs and use of differentiated and self-standing service models is not discriminatory and consistent with applicable law.**

### **Gender Ideology Extremism**

The executive order on [gender ideology extremism](#) declares that there are only two genders and attempts to deny the existence of transgender individuals, with the effect of trying to erase them from public life. These orders have also been challenged in Federal Court by several organizations,<sup>4</sup> including the AIDS Foundation of Chicago, noting that the order “renders it impossible for [organizations] to provide culturally competent and affirming services, including targeted HIV prevention, testing, and treatment services that are critical for transgender people.”<sup>5</sup> They have further been challenged on grounds that they are vague, making it difficult to know whether organizations are in compliance, as well as on free speech grounds. The courts have not yet ruled on its implementation and it currently remains in effect.

Answering a question about compliance with the “gender ideology extremism” Executive Order puts organizations in a quandary that may have implications for their funding: if they answer that they are in compliance, they may have to change organizational policies and programs that may

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<sup>3</sup> [https://storage.courtlistener.com/recap/gov.uscourts.mdd.575287/gov.uscourts.mdd.575287.44.0\\_6.pdf](https://storage.courtlistener.com/recap/gov.uscourts.mdd.575287/gov.uscourts.mdd.575287.44.0_6.pdf)

<sup>4</sup> National Urban League v. Trump <https://www.courtlistener.com/docket/69651274/national-urban-league-v-trump/> and Rhode Island Latino Arts, et al v. National Endowment of the Arts <https://assets.aclu.org/live/uploads/2025/03/Complaint-file-stamped.pdf>; San Francisco AIDS Foundation et al. v. Trump, [Case 3:25-cv-01824 Document 1 Filed 02/20/25 Page 1 of 73](#)

<sup>5</sup> [https://storage.courtlistener.com/recap/gov.uscourts.dcd.277566/gov.uscourts.dcd.277566.1.0\\_1.pdf](https://storage.courtlistener.com/recap/gov.uscourts.dcd.277566/gov.uscourts.dcd.277566.1.0_1.pdf)

have impacts on their ability to effectively serve transgender people and perhaps engage in other gender-based programming, including gender-based violence. If they answer that they are in compliance with the executive order and they are later found by the US government to be in violation, they may have to return funding and be barred from future funding. If they answer that they are not in compliance, because they do recognize and provide non-discriminatory and affirming services for transgender people, they are also likely to lose funding.

We think it is possible to argue that providing health-related services to people and populations according to their specific health needs is fully justified, including through differentiated and self-standing care models such as those that typically provide trans care. Health ethics in general recognize a duty to meet the particularized needs of specific populations and to provide differentiated services to meet those needs. Thus, we have pediatric care, geriatric care, gynecologic and obstetric care, oncology, etc.; we also have specialists in treating sickle cell anemia even though it differentially impacts people of African descent. Similarly, it is not discriminatory to track inequalities in the burden of disease and in health care coverage and outcomes or advocate for non-discriminatory access to health services. **As such, we advise that organizations consider the potential risks of a response either way, and decide on their response based on the risks they are willing to bear, but also realize that provision on health and social services based on differentiated needs is perfectly lawful.**

Because this executive order is likely to be blocked by courts on grounds of violating first amendment protections on free speech, US-based organizations may have some additional protections. However, the courts have consistently held that non-US-based organizations do not hold the same rights under the US constitution and can be held subject to conditions that impact their speech if they choose to accept US government funding. Nonetheless, some of the other grounds for invalidating the Executive Order may be viable also for non-US-based organizations. Once again, organizations might try to preserve their rights as follows:

**We are aware that the “gender ideology extremism” Executive Order upon which these questions are based has been challenged in U.S. courts on multiple grounds including unconstitutional vagueness. While reserving our potential rights to protection from enforcement of the “gender ideology extremism” Executive Order, we assert that our provision of services to people and populations based on their health needs and use of differentiated and self-standing service models is not discriminatory and consistent with applicable law.**