

Subject: ENSURING NONDISCRIMINATION AND EQUAL OPPORTUNITY IN DEPARTMENT OF TRANSPORTATION POLICIES, PROGRAMS, AND ACTIVITIES

1. PURPOSE

This Order sets forth the steps to be taken by the U.S. Department of Transportation (DOT) to implement the provisions of Executive Order 14151, titled Ending Radical and Wasteful Government DEI Programs and Preferencing, Executive Order 14173, titled Ending Illegal Discrimination and Restoring Merit-Based Opportunity, Executive Order 14281, titled Restoring Equality of Opportunity and Meritocracy, and Executive Order 14168, titled Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government, which direct Federal agencies to: (i) terminate all discriminatory programs within the Federal Government, including illegal diversity, equity, and inclusion (DEI) programs, policies, or mandates; (ii) eliminate the use of DEI programs that violate Federal anti-discrimination laws, as well as the unconstitutional use or consideration of race and sex, as factors in agency supported or assisted programs and activities, including without limitation all agency grants, loans, contracts and agency supported or assisted State contracts; and (iii) eliminate in all contexts the use of disparate-impact liability, which “imperils the effectiveness of civil rights laws by mandating, rather than proscribing, discrimination.”

2. AUTHORITY

- Executive Order 14151 (Ending Radical and Wasteful Government DEI Programs and Preferencing)
- Executive Order 14173 (Ending Illegal Discrimination and Restoring Merit-Based Opportunity)
- Executive Order 14281 (Restoring Equality of Opportunity and Meritocracy)
- Executive Order 14168 (Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government)

3. APPLICABILITY AND SCOPE

This Order applies to all the Department’s Operating Administrations.¹

4. EFFECTIVE DATE

This Order is effective upon issuance.

¹ The term “Operating Administration” includes the Office of the Secretary, Office of Inspector General, and Operating Administrations.

5. POLICIES

Consistent with the stated purpose and cited authorities of this Order, the following principles govern the implementation and administration of DOT policies, programs, and activities to ensure they are consistent with applicable law:

- a. The use or consideration of race and sex or other unlawful DEI principles as factors in DOT-supported or -assisted programs and activities, including without limitation, all DOT grants, loans, contracts, and DOT supported or assisted State contracts, undermines merit-based analysis and decision making and is unconstitutional and is not permitted.
- b. In accordance with constitutional principles, the Department's grantmaking, lending, policymaking, and rulemaking activities shall be conducted and administered without consideration of race or sex or other unlawful DEI principles as factors.
- c. Statutes governing DOT policies, programs, and activities shall be administered, to the extent practicable, relevant, and appropriate, without unconstitutional presumptions of disadvantage based on race or sex or other unlawful DEI principles. All such determinations of disadvantage must be individualized and based on proof establishing the existence of disadvantage by a preponderance of the evidence.
- d. In lieu of considering race or sex or other unlawful DEI principles as factors in DOT-supported or -assisted programs and activities that call for preferences to be afforded based on disadvantage, the Department should consider relevant factors, including but not limited to, geographic location and socioeconomic status. However, geographic location must not be used as a proxy for race and sex; rather, geographic considerations shall encompass the development of nearby infrastructure and the robustness of local economic activity.
- e. Enforcement of all statutes and regulations governing DOT policies, programs, and activities shall be deprioritized to the extent they are premised on unlawful DEI principles or include disparate impact liability.

6. RESPONSIBILITIES

- a. The General Counsel is the chief legal officer of the Department with final authority on all questions of law for all components of DOT. The Office of the General Counsel (OGC) shall provide the legal advice, support, and guidance necessary to implement and effectuate this Order, including via the issuance of supplemental orders as warranted.
- b. OAs engaged in grantmaking, lending, policymaking, or rulemaking activities shall, in coordination and consultation with OGC, implement this Order and

- c. determine the most effective and efficient way of integrating the principles outlined in this Order with their existing policies, programs, and activities.
- d. In undertaking the integration with their existing policies, programs, and activities, and in coordination and consultation with OGC, each OA shall:
 - 1. Develop and issue guidance necessary to implement and effectuate this Order, or review and update any previously issued guidance to ensure consistency with this Order. OAs shall also engage in the notice-and-comment process, as appropriate and in accordance with DOT Order 2100.6B (Policies and Procedures for Rulemakings) and any corresponding regulations, to implement the requirements of this Order.
 - 2. Review existing OA Notices of Funding Opportunity, grant agreements, loan agreements, contracts, and other program documents as necessary, and, to the extent permitted by law, amend the general terms and conditions as necessary to ensure compliance with constitutional requirements, Federal law, and consistency with this Order, and provide corresponding notice of such to recipients.
- e. OAs shall prepare a report describing their efforts to comply with this Order and the impact of those efforts on their grantmaking, lending, policymaking, and rulemaking activities. The first of these reports shall be submitted to the Office of the Under Secretary of Transportation for Policy no later than six months after the date of this Order, and each subsequent report shall be due at such intervals thereafter, as determined by the Office of the Under Secretary of Transportation for Policy no later than six months thereafter.
- f. OAs shall also observe the following principles:
 - 1. This Order should be implemented in a simple, transparent manner that avoids adding procedural or regulatory steps or causing undue delay. The Order should not be interpreted to impose procedural or regulatory requirements that provide no benefit in the decision-making process. The Order should be carried out in a manner that considers the impact that delays in project delivery or rulemaking may have on the economic vitality, safety, and well-being of the American people, their families, and communities.
 - 2. OAs shall strive to promote the economic opportunities of DOT programs, policies, and activities for disadvantaged persons, families, and communities. Procedures shall be established or modified, as necessary, to provide meaningful opportunities for public involvement by disadvantaged persons, families, and communities during the planning and development of programs, policies, and activities (including the identification of potential effects, alternatives, and mitigation measures).

3. OAs shall ensure comprehensive public engagement, including with disadvantaged persons, families, and community stakeholders, and provide meaningful access to public information concerning both the costs and the benefits of DOT programs, policies, or activities.
4. Compliance with the terms of this Order is an ongoing responsibility. OAs shall continuously monitor their programs, policies, and activities to ensure they are administered in a manner consistent with this Order. This Order does not alter existing assignments or delegations of authority to the Operating Administrations or other DOT components.
- f. The Departmental Office of Civil Rights (DOCR) serves as the principal policy advisor to the Secretary and Deputy Secretary on civil rights statutes and regulations applicable to the Department and is responsible for providing guidance to the OAs concerning the implementation and enforcement of all civil rights laws, regulations, and Executive Orders. In coordination and consultation with OGC, DOCR shall provide technical assistance and guidance as necessary to assist the OAs with implementing and effectuating this Order.

7. DISCLAIMER

This Order is intended to improve the internal management of DOT and is not intended to, nor does it, create any rights, benefits, or trust responsibility, substantive or procedural, enforceable at law or equity, by a party against the Department, its OAs, its officers, or any person. Nor should this Order be construed to create any right to judicial review involving the compliance or noncompliance with this Order by the Department, its OAs, its officers, or any other person. This Order does not impose any obligations or duties on any person or entity outside DOT.



Sean P. Duffy
Secretary of Transportation

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