



July 2, 2026

**Via Federal Rulemaking Portal**

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RE: Information Collection Control No. 9000–XXXX, Addressing DEI Discrimination, (Fed. Reg. Docket ID FAR 2026–0067-0001)

Dear Administrator and FAR Council Chair Rhodes, Deputy Administrator and FAR Council Member Blum, Principal Director and FAR Council Member Tenaglia, Senior Procurement Executive/Deputy CAO and FAR Council Member Niese, and Senior Procurement Executive and FAR Council Member Koses:

We, the Attorneys General of California, Illinois, Maryland, Colorado, Connecticut, Delaware, the District of Columbia, Hawaii, Maine, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont, Virginia, Washington, and Wisconsin. (the “States”) write in opposition to the proposed collection of information noticed in the Federal Register Notice entitled, “Information Collection; Addressing DEI Discrimination by Federal Contractors,” which was published by the Office of Federal Procurement Policy in the Office of Management and Budget (OFFP), the Department of Defense (DoD), the General Services Administration (GSA), and the National Aeronautics and Space Administration (NASA), acting together as the Federal Acquisition Regulatory (FAR) Council, on May 6, 2026, at 91 Fed. Reg. 24544.

## **I. INTRODUCTION**

The Notice states that in accordance with the Paperwork Reduction Act of 1995 (PRA) and Office of Management and Budget (OMB) regulations, OFFP, DoD, GSA, and NASA invite comments on: whether the proposed collection of information is necessary for the proper performance of the functions of Federal Government acquisitions, including whether the information will have practical utility; the accuracy of the estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents.

The States write in opposition to the proposed information collection because: (1) in violation of the PRA and OMB regulations, the collection, or at least parts of it, is already being sponsored and conducted; (2) the collection is not described with sufficient specificity for the public to be able to provide the types of comments provided for by the PRA; (3) the estimated burden of the proposed collection is inaccurate; and, (4) the collection does not provide for the privacy and security of sensitive and confidential personal information. On these grounds, the States urge the noticing agencies/FAR Council to withdraw the Notice and not proceed to request clearance of the proposed information collection from the Director of OMB at the conclusion of the currently noticed period.<sup>1</sup>

The States also identify ways in which the proposed information collection *increases* the burdens on federal contractors and *reduces* the quality, utility, and clarity of the information that might be collected.

## **II. BACKGROUND**

The Notice’s purpose is to support clearance of a new information collection that federal agencies are directed to carry out by Executive Order (E.O.) 14398, Addressing DEI Discrimination by Federal Contractors (March 26, 2026). E.O. 14398 prohibits contractors from engaging in any racially discriminatory diversity, equity, and inclusion (DEI) activities. Section 3

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<sup>1</sup> The States further urge the noticing agencies/FAR Council take corrective action recognizing and unequivocally establishing that, prior to obtaining clearance from the OMB Director, no obligation imposed or implied from the information collection language that has already been included in contracts, subcontracts, and contract solicitations as described herein is legally operative.

of E.O. 14398, titled “*Requirements for Federal Contractors*,” directs that, within 30 days of the date of the order, executive departments and agencies “shall, to the extent permitted by law, ensure that contracts and contract-like instruments, including contractors’ subcontracts and subcontractors’ lower-tier subcontracts” include clauses in which the contractor, “in connection with the performance of work under th[e] contract,” agrees as follows:” (1) “The contractor will not engage in any racially discriminatory DEI activities, as defined in section 2 of the Executive Order of March 26, 2026 (Addressing DEI discrimination by Federal Contractors); (2) “*The contractor will furnish all information and reports, including providing access to books, records, and accounts, as required by the contracting agency pursuant to the Executive Order of March 26, 2026 (Addressing DEI Discrimination by Federal Contractors), for purposes of ascertaining compliance with this clause*” (italics added); (3) “In the event of the contractor’s or a subcontractor’s noncompliance with this clause, this contract may be canceled, terminated, or suspended in whole or in part, and the contractor or subcontractor may be declared ineligible for further Government contracts;” (4) “*The contractor will report any subcontractor’s known or reasonably knowable conduct that may violate this clause to the contracting department or agency*” (italics added); and, (5) “*The contractor will inform the contracting department or agency if a subcontractor sues the contractor and the suit puts at issue, in any way, the validity of this clause.*” (Italics added). The Notice recognizes that the italicized parts of this ordered contract clause comprise a collection of information that is subject to the PRA, including the OMB PRA regulations.<sup>2</sup>

As directed by E.O. 14398, on April 17, 2026, the FAR Council issued a memorandum to Chief Acquisition Officers, Senior Procurement Executives, the Defense Acquisition Regulations Council, and the Civilian Agency Acquisition Council directing agencies that issue contracts subject to the FAR to include the information collection in new contracts beginning April 24, 2026, and to modify existing contracts to include the information collection by July 24, 2026, specifying that these provisions flow down to subcontracts at any tier.<sup>3</sup> Since that date, federal agencies have taken rapid steps to add the DEI clause and the noticed information collections to new and existing federal contracts, including contracts held by the commenting States.

The noticed information collection would reportedly apply to an estimated 642,032 federal contracts or subcontracts, encompassing approximately 34,126 prime contractors, and as many as

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<sup>2</sup> 91 Fed. Reg. 24544, 24545 (May 6, 2026) (noticing these parts as being a collection of information covered by the PRA); *see* 44 U.S.C. § 3502(3) (defining the term “collection of information” for purposes of the PRA). E.O. 14398 also requires federal contracts and subcontracts to include a clause stating, “The contractor recognizes that compliance with the requirements of this clause are [sic] material to the Government’s payment decisions for purposes of section 3729(b)(4) of title 31, United States Code (False Claims Act).” EO 14398, § 3. To the extent this recognition purports to be anything more than recognition of the government *saying* that compliance with the requirements of this clause is material to the government’s payments decisions for FCA purposes, it may be an additional information collection subject to the PRA. *See* 44 U.S.C. § 3502(3); 5 C.F.R. § 1320.3(c). Because the False Claims Act-related clause is not included in the information collection that has been noticed for comment, the States do not comment on it here.

<sup>3</sup> The FAR Council memorandum is available at <https://tinyurl.com/327hyf5x> [as of June 10, 2026]. The FAR Council memorandum provides additional detail regarding the types of contracts and subcontracts that are subject to the information collection.

481,524 subcontractors—including the States, all of which have federal contracts.<sup>4</sup> Consistent with E.O. 14398, the new language that the FAR Council memorandum directs agencies to include in their contracts provides that an agency may disbar a contractor for failing to comply with the new information collections, and may suspend a contractor suspected, upon adequate evidence, of failure to comply.<sup>5</sup>

### III. OPPOSITION AND COMMENTS

#### A. The Information Collection is in Violation of the PRA

The information collection directed by the FAR Council memorandum is in violation of the PRA. The FAR Council and implementing federal agencies are improperly treating the PRA’s information collection approval process as a pro forma exercise and approval of the proposed new collection as a foregone conclusion, without considering and responding to public comments as required by law, and without complying with any of the other PRA’s procedural and substantive requirements.

Federal agencies may not “conduct or sponsor a collection of information”<sup>6</sup> until they have complied with all the procedural (and substantive) requirements in the PRA, including: (1) an initial 60-day notice and comment period; (2) submission of the proposed collection to OMB for approval (or “clearance”) following the conclusion of the initial 60-day notice period—including required certifications and a record supporting the certifications; (3) a minimum 30-day OMB notice and comment period following the submission of the proposed collection to the OMB; (4) OMB Director approval of the collection (or lawful inference of OMB Director approval, as described in the PRA); and (5) agency receipt from the OMB Director of a control number to be displayed upon the collection of information.<sup>7</sup>

The only one of these events that has occurred to date is the (untimely) noticing of an initial 60-day comment period in the Federal Register. Yet the FAR Council has nonetheless ordered the information collection to be included in federal contracts and subcontracts and contract solicitations. And federal agencies have already been including the new information collection in new federal contracts and contract modifications, from which they are flowing down to

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<sup>4</sup> This information is found in a below-referenced watermarked draft document the States obtained from the information contact listed in the Notice, entitled “Federal Acquisition Regulation (FAR) Addressing DEI Discrimination by Federal Contractors (E.O. 14398), OMB Control No. 9000-0208, Justification—Part A Supporting Statement,” which reported that FY 2025 SAM Contract Awards Management data showed 160,508 contracts were awarded to 34,126 unique vendors and estimated three subcontracts per prime contract.

<sup>5</sup> FAR Council memorandum, 5-6, available at <https://tinyurl.com/327hyf5x> [as of June 10, 2026].

<sup>6</sup> “A Federal agency is considered to ‘conduct or sponsor’ a collection of information if the agency collects the information, causes another agency to collect the information, contracts or enters into a cooperative agreement with a person to collect the information, or requires a person to provide information to another person, or in similar ways causes another agency, contractor, partner in a cooperative agreement, or person to obtain, solicit, or require the disclosure to third parties or the public of information by or for an agency.” 5 C.F.R. § 1320.3(d).

<sup>7</sup> 44 U.S.C. § 3507.

subcontracts. These actions purport to render the federal contractors and subcontractors contractually subject to the new information collection, including whatever new record retention requirements (or new contractor or subcontractor obligations to collect information or maintain information) the proposed collection might impose,<sup>8</sup> despite the fact that the information collection has not been timely noticed and has not received OMB Director clearance (or a control number from the OMB Director). The involved federal agencies' actions in this regard are in blatant violation of the PRA.

The noticing agencies/FAR Council should take appropriate corrective action immediately, including action to recognize and establish that, as included in contracts and subcontracts without PRA compliance, the information collection is not legally operative.

The FAR Council's April 17, 2026 memorandum states that the Council is seeking OMB clearance under the PRA, and that once OMB approves the collection under the PRA, agencies will be expected to enforce "full compliance" with the collection requirements.<sup>9</sup> These statements do not resolve or remove the present illegality, as the information collection remains improperly in federal contracts and subcontracts; the Council's statements do not appear to legally prohibit any agency from seeking to carry out or require adherence to the collection; and the Council's statements appear to amount to nothing more than the appearance of a plan to voluntarily delay operationalizing the new information collection (or some part of it), with the Council (or individual agencies) free to change course prior to OMB clearance.

Further, the FAR Council memorandum also states that, before OMB approves the information collection, "agencies should expect that contractors will alert the appropriate contracting officer of potential violations of the clause or lawsuits relating to the clause [i.e., comply with this element of the information collection]." This statement suggests that federal agencies are being advised that, in fact, they may or should enforce some parts of the proposed new information collections prior to OMB approval.<sup>10</sup> The FAR Council memorandum also fails to state that contractors and subcontractors with the information collection already included in their contracts are not—prior to OMB clearance—required to comply with whatever information or records retention or maintenance requirements the new information collection might impose on them beyond those already required by preexisting law or preexisting contractual obligations.

The proposed collection also violates the PRA because the Notice does not describe the information collection with enough specificity for the public to be able to provide the types of comments provided for by the PRA. Apart from the lack of clarity deriving from the fact that the

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<sup>8</sup> A "collection of information" includes "any requirement or request for persons to obtain, *maintain*, *retain*, report, or publicly disclose information." 5 C.F.R. § 1320.3(c) (*italics added*); *see id.*, § 1320.3(c)(1)(a) "collection of information" may be in any form or format, "including . . . reporting or recordkeeping requirements; contracts; agreements"); *id.* ("A "collection of information" may implicitly or explicitly include related collection of information requirements.").

<sup>9</sup> FAR Council memorandum, 3 (Apr. 17, 2026), available at <https://tinyurl.com/327hyf5x> [as of June 10, 2026].

<sup>10</sup> Indeed, the memorandum's statement that agencies are not expected to enforce "full compliance" prior to OMB clearance implies they are expected to enforce some compliance before clearance.

underlying contract clause language directed by E.O. 14398 regarding “racially discriminatory DEI activities” is unclear and does not provide sufficient explanation of what it prohibits, the Notice is also deficient because it fails to sufficiently describe what information and reports, including what types of books, records, and accounts, contractors may be required to furnish. It also fails to specify the periods of time for retention or how, when, or as to what time period a contractor must report any subcontractors’ known or reasonably knowable conduct that may violate the agreement not to engage in any racially discriminatory DEI activities.

### **B. The Information Collection is not Necessary**

In general, the States do not have enough information to understand why the proposed collection of information might be necessary for the proper performance of the functions of federal government acquisitions or would have practical utility, and do not concede here that it is necessary or would have practical utility. To the extent the proposed collection seeks to effect recordkeeping, reporting, or production obligations that are duplicative of obligations contractors are already under pursuant to other laws, including other extant FAR provisions, or contract terms, the proposed collection is also not necessary for that reason. The States also note the lack of any record supporting any conclusion that the information collection “has been developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected.”<sup>11</sup>

### **C. The Estimated Burden to Contractors is Too Low**

As the discussion above establishes, the Notice does not provide the public with sufficient information to estimate the proposed collection’s burden to contractors. Nonetheless, the Notice is sufficient to show that the noticing agencies’/FAR Council’s estimate is too low.

The Federal Register notice estimates the annual burden<sup>12</sup> of the information collection as 1,365 respondents, 6,825 total annual responses, and 7,965 total burden hours.<sup>13</sup> A watermarked draft Justification<sup>14</sup> further discusses that one percent of all potential contract awards—estimated at 642,032 awards—will require submission of the information under the information collection contract clause. The one percent estimate—which appears to be an estimate that one percent of awards will be reviewed for compliance with the DEI clause—is unexplained and arbitrary. Apparently for the purpose of deciding which awards to audit, E.O. 14398 directs a group of federal administrators to “identify economic sectors that pose a particular risk of entities engaging in racially discriminatory DEI activities based on current or past conduct and issue additional guidance to contracting agencies regarding best practices to ensure compliance with this order

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<sup>11</sup> 44 U.S.C. § 3506(c)(3).

<sup>12</sup> “Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency,” including, but not limited to, reviewing instructions, training personnel to be able to respond to a collection of information, searching data sources, completing and reviewing the collection of information, and transmitting, or otherwise disclosing the information.” 5 C.F.R. § 1320.3(b)(1); see 44 U.S.C. § 3502(2).

<sup>13</sup> 91 Fed. Reg. 24544, 24545 (May 7, 2026).

<sup>14</sup> Justification—Part A Supporting Statement, obtained from the contact for further information identified in the Notice.

within such sectors.”<sup>15</sup> To the States’ knowledge, this work has not been performed yet (or had not yet been performed when the estimated burden was prepared) and it is therefore arbitrary and speculative to estimate that only one percent of awards will be audited when the process of identifying sectors has not been completed.<sup>16</sup>

The draft Justification estimates the time for an entity to respond to a request for examination of records as one hour. An estimate of one hour to furnish “all information and reports, including providing access to books, records, and accounts, as required by the contracting agency” is plainly both arbitrary and too low.<sup>17</sup> A federal contractor or subcontractor—and especially any large contracting entity—that is asked to furnish all information and reports, including providing access to books, records, and accounts, to ascertain compliance with the agreement not to engage in any vaguely defined DEI activities is going to spend significantly more than one hour to comply. The already significant time requirement is increased by the requirement that the contractor must identify the universe of information and records that is related to “the performance of work under th[e] contract.” There is also no accounting provided for the different burdens that different contracting agencies might impose or the different types of burdens that might be imposed on different contractors or subcontractors.

The draft Justification estimates that the time for a contractor to report any subcontractor’s known or reasonably knowable conduct that may violate the DEI clause to the contracting department or agency is five minutes per response. This estimate is plainly too low, unless something like an informal phone call or email is contemplated. The estimate also baselessly assumes that a prime contractor will level serious allegations against a subcontractor without expending any time or resources to collect information to substantiate a charge that the subcontractor is violating the DEI clause in connection with the subcontract and prime contract at issue. For these reasons as well, the estimated burden of the information collection is too low.

#### **D. The Proposed Collection Does not Provide for Privacy and Security**

The commenting States are concerned that the information collection poses risks to the privacy and security of sensitive, confidential, and personally identifiable information related to individuals including employees of federal contractors and subcontractors and applicants for employment with federal contractors and subcontractors, and to contractors’ and subcontractors’ compliance with applicable privacy and information security requirements. The Notice is silent on

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<sup>15</sup> E.O. 14398, § 4(b).

<sup>16</sup> The estimated burden also assumes an average of three subcontracts per prime contract. In addition to being unexplained, this assumed average also appears to be too low, given that: (1) E.O. 14398 requires the information collection to be imposed on all contracts and contract-like instruments, including contractors’ subcontracts and subcontractors’ lower-tier subcontracts; and, (2) the FAR Council memorandum directs the information collection to be included in new solicitations and contracts valued over the micro-purchase threshold—\$15,000—including those for commercial products and commercial services, and for which the place of delivery or performance is in the United States, and states that the information collection flows down to subcontracts at any tier, including those for commercial products and commercial services, for which the place of delivery is the United States. This factor too renders the estimated burden too low.

<sup>17</sup> 5 C.F.R. § 1320.3(b)(1); see 44 U.S.C. § 3502(2)

this front. The draft Justification has nothing to say on the subject other than, “[t]his information is disclosed only to the extent consistent with prudent business practices, current regulations, and statutory requirements.”

**E. The Proposed Collection Increases the Burdens to Federal Contractors and Reduces the Quality, Utility, and Clarity of the Information that Might be Collected**

Through its lack of clarity, the confusion it sows in terms of what it requires, and its potential inconsistency with information collection obligations contractors are already under, the proposed information collection *increases* the burdens on federal contractors and *decreases* the consistency, quality, utility, and clarity of the information that might be collected. These issues are compounded further because the noticing agencies/FAR Council failed to give the public a developed description of what the collection might actually require.<sup>18</sup> They failed to propose or provide a test of the information collection before the proposed collection of information was finalized for submission to the OMB Director for approval.<sup>19</sup> And they also failed to consult with contractors and subcontractors to “enhance the quality, utility, and clarity of the information to be collected” and “minimize the burden of the collection of information on those who are to respond.”<sup>20</sup>

**IV. CONCLUSION**

For the foregoing reasons, the commenting States urge the noticing agencies/FAR Council to withdraw the Notice and the proposed collection.<sup>21</sup>

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<sup>18</sup> See 5 C.F.R. § 1320.8((d)(2) (“If the agency does not publish a copy of the proposed collection of information, together with the related instructions, as part of the Federal Register notice, the agency should—(i) Provide more than 60–day notice to permit timely receipt, by interested members of the public, of a copy of the proposed collection of information and related instructions; or (ii) Explain how and from whom an interested member of the public can request and obtain a copy without charge, including, if applicable, how the public can gain access to the collection of information and related instructions electronically on demand.”). One of the commenting States requested a copy of the information collection documents by emailing the contact for further information provided in the Federal Register, FARPolicy@gsa.gov. The response referred the requester to an attached draft Justification—Part A Supporting Statement, referenced above, and referred the State to the FAR Council memorandum dated April 17, 2026. But the response did not provide any materials or instructions or guidance that actually describes with any specificity what the different elements of the proposed collection will look like, or what they will require, in operation.

<sup>19</sup> 44 U.S.C. § 3506(c)(1)(A)(v); 5 C.F.R. § 1320.8(a)(6); see 44 U.S.C. § 3507(a)(1)(A) (“An agency shall not conduct or sponsor the collection of information unless in advance of adoption . . . of the collection of information the agency has conducted the review required under section 3506(c)(1).”). With regard to its problems related to personal privacy and information security concerns, the proposed collection should also include any confidential information that will be collected and set forth the policies, procedures, standards, and guidelines on privacy, confidentiality, security, disclosure and sharing of information collected or maintained by or for the agency.

<sup>20</sup> 44 U.S.C. § 3506(c)(2)(A)(iii), (iv); see *id.*, § 3507(a)(1)(B).

<sup>21</sup> The noticing agencies/FAR Council has not explained or specifically identified the source of any authority they have to seek or obtain OMB clearance that will cover each of the agencies conducting the proposed information collection. Nothing in this letter should be construed as the States conceding that the FAR Council has such authority.

Sincerely,



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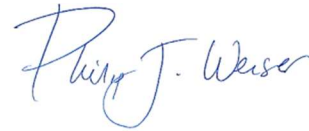
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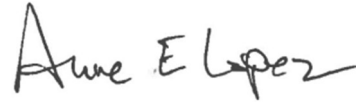
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