New Executive Order Increases Complexity for Companies and Institutions Facing Congressional Scrutiny

November 23, 2026

KEY TAKEAWAYS

- On November 20, 2026, President Trump signed Executive Order 14438, directing federal contractors and subcontractors to alert the White House and federal contracting agencies to congressional requests concerning their Executive Branch work and communications.

- The Order requires contractors to follow instructions to withhold from production to Congress any materials that the White House or contracting agencies determine to be protected by executive privilege. In case of noncompliance, contracting agencies must consider a range of enforcement responses, including cancellation or termination of government contracts and/or suspension or debarment of the contractors.

- The Order comes amid increasing tensions between the Executive Branch and the incoming Democratic majority in Congress over congressional oversight. That conflict has already raised the stakes for companies caught in the middle. The Order further crystallizes those risks, not only for federal contractors and subcontractors but for all companies and institutions that depend on constructive working relationships with both the Executive Branch and Congress.

- Private sector companies and institutions should map their exposure, closely monitor upcoming guidance and developments, and ensure that they put themselves in a position to act quickly and seek informed and calibrated advice from legal, government affairs, and public relations professionals.

Scope of the Executive Order 14438. On November 20, 2026, President Trump issued Executive Order 14438, "Protecting the Executive's Privileges and Enhancing Efficiencies in Federal Contracting" (the "Order").[1] Effective immediately, the Order directs federal contractors to notify both the White House and the contracting agencies of any pending or future congressional requests concerning the contractors' communications with or work for the Executive Branch. It also directs the contractors to comply with any subsequent instructions from the White House or contracting agencies to withhold communications deemed subject to executive privilege. Notably, these requirements extend to subcontractors working on federal contracts, with prime contractors responsible for ensuring their compliance.

Contracting agencies must set up procedures to monitor compliance and enforce the terms of the Order, including by cancelling or terminating government contracts or debarring the contractors. The Office of Management and Budget ("OMB") is directed to develop further guidance.

The Order is not limited to congressional subpoenas; its requirements extend to any congressional request, presumably including informal letters. Likewise, the notice requirement applies to any requests relating to Executive Branch work or communications, not just those that implicate materials potentially subject to executive privilege. The Order cites as its rationale not only privilege concerns but also the preservation of taxpayer funds, suggesting that the Administration may argue that congressional requests are inappropriate because they are duplicative or wasteful. The process mandated by the Order may give the Executive Branch greater visibility into, and influence over, contractors' responses to congressional investigations.

The Trump Administration has taken a broad view of the scope of executive privilege—the constitutionally based protection for deliberative materials involving the President and his top advisers. In an August 10, 2026 opinion, the Department of Justice's Office of Legal Counsel concluded that communications with "private advisers" outside the Executive Branch may be privileged if they concern official presidential decision-making or reflect confidential communications with the President or his direct advisers.[2] That position is likely to be contested, and the Order puts privatesector companies and institutions squarely in the middle of the conflict.

The Order's Implications for the Next Congress. The Order follows Democrats' victories in the November 3 midterm elections, which gave the party control of both

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1 Exec. Order No. 14438, *Protecting the Executive's Privileges and Enhancing Efficiencies in Federal Contracting* (Nov. 20, 2026), available here (not to be confused with Exec. Order No. 14438, *Decreasing Housing Costs for the American People*, 91 Fed. Reg. 68007 (Oct. 28, 2026), bearing the same number).

2 *Applicability of Executive Privilege to Presidential Communications with Private Advisers*, 50 Op. O.L.C. __ (Aug. 10, 2026), available here.

the Senate and the House of Representatives beginning in January 2027. Democratic leaders have made clear that aggressive congressional oversight will be a priority, with particular focus on the private sector's interactions with the Trump Administration.[3]

These plans are already taking shape. On November 18, for example, Rep. Robert Garcia (D-CA), who is expected to lead the House Committee on Oversight and Government Reform, issued a series of preservation and information requests to members of President Trump's family, his advisers, and senior officials.[4] Senate Democrats have renewed requests for records to private companies, including donors to the White House ballroom project.[5] Similarly, Democrats on the House Natural Resources Committee issued document preservation requests to dozens of companies and federal agencies, following up on earlier document requests.[6]

The Administration has signaled that it will react aggressively. The White House has reportedly expanded its legal team to respond to anticipated investigations.[7] In a November 9, 2026 letter to Rep. Garcia, White House Counsel Will Scharf challenged inquiries that he described as abusive and indicated that the White House would resist subpoenas it views as lacking a legitimate legislative purpose.[8] The Order represents another salvo in this growing confrontation.

Recommendations for Private Sector Companies. Although government contractors and subcontractors are most directly impacted by the Order, its ramifications extend more broadly. Along with other Executive Branch actions, the Order serves as a warning to all companies that depend on constructive relationships with the federal government, including those that rely on government approvals or funding or have other government touchpoints. All such companies would be well advised to weigh and consider the appropriate posture vis-à-vis both Congress and the Executive Branch if they are on the receiving end of congressional requests.

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3 Maya Davis, *Democrats Name Top Targets for Trump Probes*, Wall St. J. (Nov. 18, 2026), available here.

4 H. Comm. on Oversight & Gov't Reform Democrats, *Incoming Oversight Chairman Robert Garcia Launches Document Preservation Letters on Trump Family Corruption, Corporate Corruption, DHS Misconduct, and Epstein Cover-Up* (Nov. 18, 2026), available here.

5 Press Release, Sen. Richard Blumenthal, *Blumenthal Sends Warning to Targets of Investigations into Crypto Corruption, Immigration Abuses, Big Tech, and More* (Nov. 5, 2026), available here.

6 Press Release, Sen. Richard Blumenthal, *Blumenthal Sends Warning to Targets of Investigations into Crypto Corruption, Immigration Abuses, Big Tech, and More* (Nov. 5, 2026), available here; *see also* Press Release, H. Comm. on Nat. Res. Democrats, *Huffman, Dexter Demand Records from Corporate Sponsors of Freedom 250* (Aug. 27, 2026), available here.

7 Katherine Doyle, *White House Readies Aggressive Fight Against Planned Investigations by Congress*, Wash. Post (Nov. 11, 2026), available here.

8 Letter from William O. Scharf, Counsel to the President, to Robert Garcia, U.S. Representative (Nov. 9, 2026), available here.

With Democratic committee leaders already announcing investigations and sending requests, companies should anticipate and prepare now for heightened congressional scrutiny come January. Early planning can help companies navigate congressional demands, Executive Branch instructions, and reputational risk without assuming that every requested document would be subject to executive privilege.

We recommend the following steps to help companies prepare:

- *Map exposure*: Identify relevant government contracts and subcontracts as well as teams likely to receive congressional requests. Government contractors should account for their subcontractors and ensure that they have a process in place to be notified promptly if subcontractors receive congressional inquiries.

- *Develop a response protocol*: Ensure that congressional requests or other outreach is routed promptly to legal and government-contracts personnel, so that potentially responsive records are preserved and to determine whether notice pursuant to the Order is required.

- *Monitor implementation of the Order*: Ensure that your in-house or external counsel closely track federal agency communications, OMB guidance, and other developments.

- *Prepare for congressional requests and Executive Branch pushback*: Government contractors and subcontractors, as well as other private-sector companies that are likely to receive congressional requests that may raise political sensitivities, should be prepared to act quickly to activate legal, government affairs, and public relations advisors. In many cases, responses to such requests are likely to require careful, informed, and well-calibrated advice that allows the company to walk a tightrope of congressional oversight and Executive Branch expectations. The timeframe for formulating that advice will be short once the requests arrive.

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