To Say or Not to Say (and How to Say It): That is the ~~DEI~~ question facing companies in 2025

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Introduction

Reporting on sustainability topics in 2025 remains unsettled and dynamic as a result of current anti-ESG sentiment in the U.S, complicated by countervailing expectations from other stakeholders seeking increased sustainability and HCM (human capital management) disclosure. Disclosures formerly known as DEI (diversity, equity and inclusion) are under particular scrutiny as companies work to understand the full impact of the executive orders issued by the new administration in early 2025.

At Labrador, we follow evolutions in corporate communications and transform our knowledge into opportunities for our clients. In this Thought Piece, we discuss early trends that are unfolding related to diversity, equity, and inclusion as companies think about how to approach disclosures across their suite of reporting. Through study of the human capital management discussions in Annual Reports on Form 10-K and the new approaches evident in early proxy statement filings, we share considerations and examples for companies as they draft their sustainability reports.

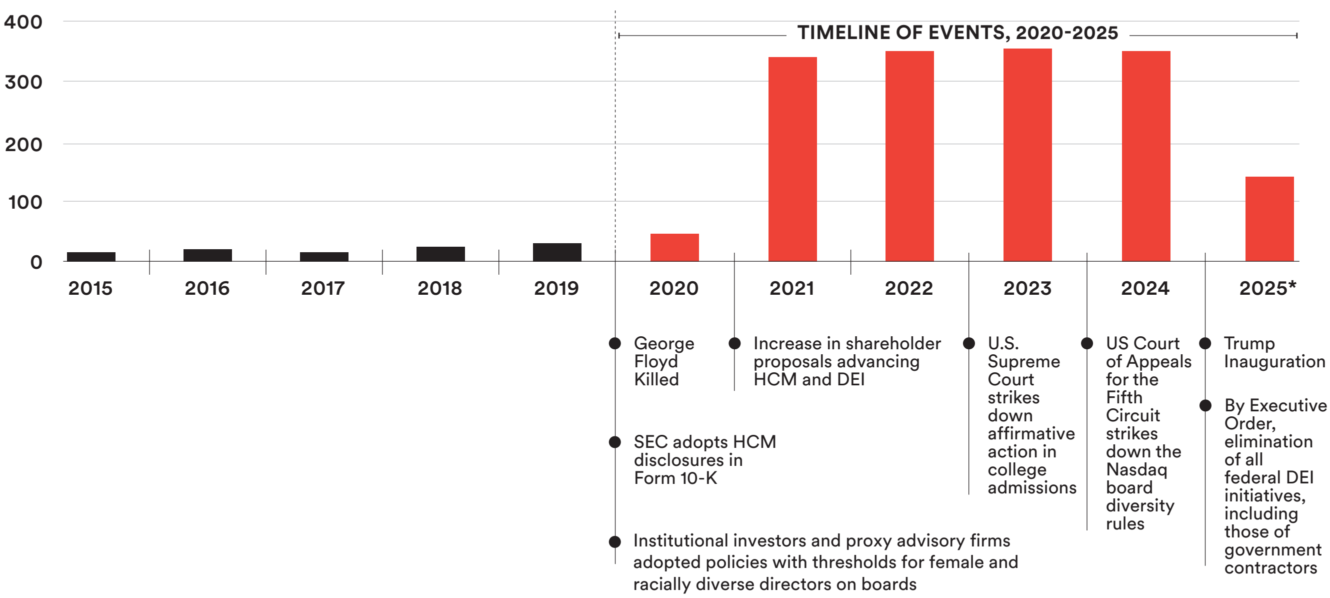
Table of Contents

Where We Are and How We Got Here

Over the past five to ten years, stakeholders have increasingly focused on social topics related to diversity of company directors and employees as well as the related concepts of equity and inclusion in hiring, retention, compensation, and day-to-day workplace experiences both within the company and in its supply chain. In August 2020, in response to investors seeking more comparable information across companies, the SEC adopted new rules requiring human capital management disclosures in Annual Reports on Form 10-K. Institutional investors and proxy advisory firms adopted policies with thresholds for female and racially diverse directors on boards, with increased engagement around these areas and the promise of votes against committee chairs and other directors for those companies who failed to meet or provide plans on how to meet such minimum requirements. Shareholder proposals advancing HCM and DEI, such as racial equity audits, have been increasingly used by proponents during this time. As a result, we have seen a significant proliferation of disclosure of HCM and DEI across the reporting suite, including the Form 10-K, proxy statements, sustainability reporting, and standalone DEI reports.

Then, in June 2023 the U.S. Supreme Court struck down affirmative action in college admissions, and multiple state attorneys general subsequently sent letters to businesses warning of potential legal consequences over race-based employment and diversity policies. Thereafter, as anti-DEI sentiment began to increase, companies began to receive anti-DEI shareholder proposals. In December 2024, the US Court of Appeals for the Fifth Circuit struck down the Nasdaq board diversity rules (including the requirement for a board diversity matrix). Finally, in late January 2025, Executive Order 14173 titled “Ending Illegal Discrimination and Restoring Merit-Based Opportunity” was signed, which eliminates all federal DEI initiatives, including those of government contractors.

S&P 500 Companies that mention “Diversity, Equity and Inclusion” in their SEC filings



Source: NY Times, sec.gov

* As of March 13, 2025

Companies were left wondering what they could and should say about DEI in their upcoming reporting. Many companies quickly removed previous sustainability and DEI reporting and updated their websites to avoid new scrutiny as they determine the implications of the executive order on their past and future reporting.

How (and if) to report has been top of mind for companies and their attorneys.

To complicate things even further, investor and other stakeholder expectations have not necessarily changed – and many employees and customers have been swiftly reactionary against companies who have publicly disavowed existing DEI programs in response to the executive order. Some companies have strongly reaffirmed their commitment to DEI. So far in 2025, anti-DEI shareholder proposals were emphatically rejected by shareholders at Apple, Costco, and John Deere. Large institutional investors and proxy advisors are making changes to policy and voting guidelines around diversity but remain focused on oversight of strategy and core governance topics; they also may be less willing to engage given recently updated SEC guidance on Schedule 13D/13G qualifications. Add to all of this the fact that existing rules (such as the HCM disclosure requirements and EEO-1 reporting) and non-US regulatory regimes (like the EU's Corporate Sustainability Reporting Directive or other DEI disclosure rules) continue to require certain HCM and DEI related reporting.

What This Means for 2024 Sustainability Reports

Based on our discussions with clients as well as other industry experts, we share the following observations:

- The approach to content and disclosure are dependent on each company's **appetite for risk** and should be **considered holistically** across all reporting and disclosure locations for consistency.
- **Legal risk remains uncertain** with regard to presentation of demographic data and goals, and additional changes and pronouncements may be yet to come on a variety of sustainability-related topics.
- Reports are expected to become **more qualitative than quantitative**, at least in the near term, as companies work to determine where the permissible lines are, how broadly problematic concepts should be construed, potential enforcement actions, and what additional changes may lie ahead.
- Reports will likely also become **shorter, more succinct, and more precise** overall, with a stronger focus on sustainability topics that are tied directly to long-term business success (i.e., financially material topics).
- For many companies, the timing of reports will be **delayed** this year, both as a result of companies working to determine their go forward approach and also allowing multiple subject matter specific reports to be combined into a singular, comprehensive document.

Considerations for Drafting Disclosures Right Now

For companies currently working on their 2024 sustainability reports, we offer the following considerations as you begin drafting and updating your report:

- What to call the policies and initiatives formerly known as DEI:
  - As noted below, based on the changes made in filings so far this year, many companies are removing references to diversity or DEI and are moving to inclusion and/or belonging.
  - Where discussion of diversity remains, it is usually limited to “diverse populations,” “diversity of perspectives, background, or experience [and skills, in the case of directors],” or workforce metrics (linked to EEO-1 categories), rather than an overarching principle like DEI.
  - The focus has shifted to overall corporate culture and fairness, as well as workforce and talent development, which may include employee engagement.
- DEI disclosures have become more cautious:
  - U.S. companies are likely to continue some or all of their existing programs and still make progress across many sustainability areas, though we have observed that many are choosing to alter how (and if) they disclose it in their reporting.
  - Many/most companies will remove DEI-related goals, especially anything that might be perceived as a quota. To the extent that they are non-numeric goals, companies can absorb the discussion into the narrative discussion of other HCM-related topics.
  - Many companies will be more careful in how DEI-related achievements and progress are disclosed, if at all; infographics highlighting DEI-related topics are likely to decrease across reporting and replaced with more narrative to allow for increased explanatory context around such topics.
  - Previous DEI-specific sections of reports will likely be removed (or renamed) with components of these discussions embedded in other HCM sections.
- Investors still want to understand the meaning and impact of sustainability-related risks and opportunities; therefore, as reports scale back or become more data-driven, the need to provide context and effectively communicate the big picture becomes even more important.
- As always, companies should anchor their discussions in how HCM programs (including DEI, of any name) support overall corporate strategy. Similarly, demonstrating how these programs drive value creation remains increasingly important this year (that is, explaining why we are doing what we are doing and how it is good for our business).
- Stakeholders, as well as raters and rankers, will likely pay attention to the deletion of information and draw their own conclusions. From a ratings standpoint, companies can anticipate that their scores will be impacted due to the absence of information – while this should not be outcome determinative for most, this will create increased visibility for other stakeholders and require pre-emptive explanation for boards of directors and executive teams so that they are not caught by surprise. Customers, employees, certain investors, and even suppliers may question a company’s reversal of its commitments, leading to reputational damage due to a loss of trust in the company, its business practices, and its disclosures. Transparency may help to mitigate risk. One recently published sustainability report directly addressed such changes in its message from the CEO and as part of the introductory overview of sustainability approach.

Observations and Examples from Early SEC Filings

So how are companies charting this unfamiliar territory so far?

To begin to identify trends or changes in approach from prior years, we reviewed the Annual Reports filed after January 21, 2025 (the day after issuance of Executive Order 14173), as well as a meaningful sampling of the definitive and preliminary proxy statements available through March 17, 2025, for the S&P 500. Notably, due to the typical January year end, retail companies were not captured as part of this review nor were other industries or companies with a non-calendar fiscal year end, which could impact overall approach to disclosure trends.

Annual Reports on Form 10-K – Trends & Observations:

- Nearly half of the companies removed all (or nearly all) discussion of DEI and approximately one-third modified the terms used to describe these programs and/or modified the approach to the continuing disclosures. The remainder continued with the same disclosure in 2025 as they included in 2024 – of these, notably several already used the term inclusion and not diversity in their reporting.
- We noted increased inclusion of risk factors related to reputational risk associated with DEI or anti-DEI sentiment, as well as pertaining to the executive order itself (especially for those companies who have government contracts).
- Companies who maintained some disclosure typically moved away from the terms diversity and DEI and its related acronyms, replacing it with the terms inclusion and/or belonging. Other notable terms were "Inclusion and Opportunity" and a "workforce grounded in meritocracy."
- Many who removed the DEI section continued to mention inclusion in their discussion of employee engagement results or as part of their culture, values, or strategy discussions – and, as noted above, some added a related risk factor.

Examples of companies that maintained prior year DEI-related disclosures

HEALTHCARE	REAL ESTATE INVESTMENT TRUST	AIRLINE
• Continued to discuss "diversity and inclusion" • Removed references to outcomes, commitments, and specific DEI percentages related to gender and "minorities"	• Revised title to "Inclusion and Diversity" (from D&I) • Removed reference to commitment to promoting and achieving greater workplace diversity	• Continued use of Commitment to Diversity, Equity, and Inclusion in heading • Strengthened discussion of how DEI is embedded in, and important, to business • Increased discussion of merit-based hiring and promotions

Note: in many cases, companies who maintained their existing disclosures already used broader references for DEI concepts or had minimal disclosures; a smaller minority of this group opted to continue their expanded disclosures of DEI

Examples of companies that deleted DEI-related disclosures

FINANCIAL TECHNOLOGY	GLOBAL FINANCIAL INSTITUTION	AGRICULTURE
• Removed references to DEI • Significantly abbreviated HCM discussion, removing paragraphs related to employee engagement, wellness, and DEI • Continued to provide percentages of global gender diversity and US ethnic diversity alongside total employee count and percentage by region	• Removed multi-paragraph discussion of diversity and inclusion • Added two sentences to discussion of development and retention that related to promotion of diversity and inclusion and networks that advance these goals; also added mention of inclusive merit-based promotions • Deleted reference to diversity goals under Forward-Looking Statements	• Removed DEI section • Replaced with Culture section that speaks to culture of belonging • Removed tabular presentation of gender and ethnic/racial diversity of executive officers

Note: while this group made wholesale deletions of the term DEI and related disclosures, many added or maintained passing references to inclusion or belonging in HCM or in the larger discussion of the company and its culture

Examples of companies that significantly modified DEI-related disclosures

PHARMACEUTICAL

- Retained dedicated discussion under HCM, changing to Inclusion (from I&D)
- Revised to emphasize inclusive practices as integral to culture and as being a business imperative to understanding patients and communities served
- Added discussion of recent executive orders, including DEI, under Government Regulation section

FINANCIAL MARKETS

- Repositioned from D&I to inclusion
- Removed discussions related to campaigns focused on attracting diverse candidates
- Continued discussion of "A Culture of Inclusion" under sub-heading, though limited to three pillars of inclusion efforts and deleted substantive discussion of diversity efforts and recognitions
- Continued to include workplace demographics, including pie charts with gender and race/ethnicity breakouts

RETAIL HEALTH SOLUTIONS

- Repositioned from DEI and colleague development to aggregated presentation of workforce strategy
- Positioned workforce strategy in terms of supporting and advancing strategic priorities
- Focus is more on development; much of previous DEI-focused discussion has been omitted (added discussion of respect as cornerstone of culture)
- Includes cross reference to annual sustainability report for more information

Note: companies that maintained disclosures generally moved to a new term of art to explain the company approach and typically shortened their discussions to omit specifics of their programs

Examples of DEI-related risk factors

TRAVEL TECHNOLOGY

Maintained existing Inclusion and Diversity discussion in HCM

- Maintained existing references to DEI in ESG-related risk factor related to increased focus and evolving stakeholder expectations on ESG and potential impact on reputation, employee retention, and willingness of customers and partners to do business with the company

CONSUMER ELECTRONICS MANUFACTURER

Removed DEI-related disclosures from HCM discussion

- Added sentence to risk factor regarding dependence on U.S. government contracts and grants to specifically reference the January 2025 executive order and risk of liability if DEI practices are deemed to violate the federal anti-discrimination laws

INDUSTRIAL PRODUCTS AND SERVICES

Maintained modified disclosures on "belonging and engagement"

- Added new ESG-responsibility risk factor, which addressed both expectations of certain shareholders, customers, employees, and regulators in certain countries as well as anti-ESG sentiment, including the January executive order

In addition to the trends and approaches described above, the following observations are also noteworthy to provide a more complete overview of DEI disclosures in recent 10-K filings:

- Certain companies are looking to the language of the executive order as they craft their disclosures this year – there are increased references to “merit-based” and “meritocracy;” as well as other terms such as “cognitive diversity.”
- While many companies removed narrative discussions of DEI, a number of companies retained demographic breakouts of gender and ethnic/racial diversity based on EEO-1 categories even if they removed the substantive discussions.
- Human Capital Management discussions were the most impacted disclosures overall, though the ripple effect through other sections was prevalent as well:
    - Risk Factors and Forward-Looking Statements (FLS): in a continuing evolution of existing risk factor practices, many companies added or updated risk factors (and similar references in FLS) to remove/update existing diversity references, others added new risk factors related to DEI-related risks or anti-DEI sentiment, and some government contractors added a risk factor related directly to the January executive order.
    - Strategy/company overview: while some companies globally removed references to DEI across their documents, others used strategy and values statements as an opportunity to retain references to inclusion (and even diversity in a limited number of cases) as important to the company and its strategic priorities even when otherwise removed from HCM discussion.
    - HCM: even for companies that removed DEI-specific sections of HCM, many included passing references to inclusion or belonging (or similar wording) within other sections of HCM, notably referencing inclusion as part of their employee engagement survey and others continuing to discuss Disability Equality Index scores.
    - Government Regulation and Legal Matters: certain companies, typically government contractors, added discussions of the recent executive order to government regulation overviews; others included discussions of actual or possible DEI legal proceedings.
    - Management’s Discussion & Analysis (MD&A): even MD&A was not immune from revision where companies previously mentioned DEI-initiatives but moved away from such disclosures in their more recent reporting.

Proxy Statements – Trends and Observations:

- We see similar variance in approach as with Annual Reports, with some companies making little change while others are making significant revisions or deletions across the proxy statement.
- Areas in which we are observing changes:
    - HCM and sustainability highlights (in introductory pages and/or the governance discussion) being removed.
    - Some are modifying the board demographic infographics to only include tenure, age, and independence (i.e., removing racial and gender diversity).
    - Headings such as “Board Diversity” are being modified to broaden references to “Experience of Director Candidates” or “Mix of Experience and Viewpoints/Perspectives.”

- o As with the 10-Ks, references to DEI moved to inclusion or similar terms throughout the report (including in executive compensation discussions of "ESG" related metrics).
- o Areas of board oversight as well as descriptions of compensation committee responsibilities either omitted DEI entirely or modified terminology in keeping with above.

- By contrast, it is also worth noting that multiple companies retained not only the DEI related infographics but also continued to include a board diversity matrix.

Examples of companies that made large, wholesale changes to remove DEI concepts from proxy statement

AEROSPACE

- Removed sustainability discussion from proxy summary
- Replaced diversity in board nominee composition infographics across proxy statement
- Modified reference from balanced and diverse board to a highly experienced board
- Deleted references to DEI throughout, replaced with HCM or inclusion in certain cases
- Substantially revised risk oversight discussion related to sustainability and created new standalone human capital management section, focused on succession planning and culture

BEVERAGE MANUFACTURER

- Deleted human capital and sustainability discussions from highlights at outset of proxy
- Removed diversity infographics from nominee demographics (leaving only age and tenure)
- Revised (or removed) references to DEI throughout, using broader concepts like talent, leadership, and culture; also deleted references to multi-cultural
- Updated "Diversity" header to "Experience of Director Candidates," and also revised discussion to refer to value of range of backgrounds, experiences, skill sets, and perspectives on the board
- Retained executive compensation metrics from 2024, changed reference from DEI to inclusion; explained in compensation committee letter that they are removing non-financial measures for 2025 to better align with current business strategy and the external environment

Examples of companies taking a more moderate approach – keeping elements of diversity while broadening other references

GLOBAL FINANCIAL INSTITUTION

- Continued to include director infographics in proxy summary regarding refreshment, tenure, age, diversity by race, gender, or sexual orientation, and nominee citizenship, though changed heading to remove reference to diversity and instead used “Board Composition”
- Continued to provide diversity identifying information for individual directors (linked in each case to EEO-1 categories), including proxy summary and election of directors
- Revised other references from [board] diversity to more generalized diversity of viewpoints, skills, and experience (or similar iterations)
- Broadened references to speak to culture (instead of talent development and diversity of workforce); also changed from “diversity, equity and inclusion” to “diversity and inclusion”
- Revised description of compensation committee to refer to human capital management broadly (deleting references to diversity and other enumerated categories)
- Omitted spotlight on sustainability, including reference to DEI-related standalone reports and references to aspirational diversity goals, EEO-1 disclosures, and pay equity practices

TECHNOLOGY

- Continued to include diversity infographics under heading of “Independent and Diverse Board,” arguably making board demographic presentation more prominent than previous year
- Continued to include “diversity” as key attribute of board, but revised to reference diversity of backgrounds, skills, talents, and perspectives
- Retained diversity demographics (gender identity and race/ethnicity) as part of skills matrix, but removed discussion of “diverse and global perspective” as part of lead-in discussion
- Updated committee descriptions to remove references to consideration of gender and ethnic diversity when considering director candidates and to revise reference from D&I to inclusion
- Removed references to consideration of D&I as part of succession planning discussions
- Revised risk oversight to broaden from D&I to talent management, inclusion, and other management resource programs
- Continued to include dedicated corporate impact section, modifying direct references from DEI to inclusion; otherwise kept year-over-year disclosure substantially the same
- Continued to report on previously established diversity modifier included in its annual incentive program, though revised discussion and title, and indicated that modifiers will be revised for 2025 executive compensation program

Examples of companies that maintained prior year diversity disclosures, making only limited, targeted changes

SEMICONDUCTORS

- Replaced former board diversity matrix with board demographics that include pie chart infographics for gender diversity and racial/ ethnic diversity
- Removed references in board biographies to certain directors being recognized leaders in sustainability as well as diversity and inclusion
- Retained ESG discussion in corporate governance section, but revised entire discussion substantially; includes discussion of diversity, belonging and inclusion with references to diverse workforce
- Expanded disclosure across multiple new HCM topics (such as total rewards, development, and employee engagement)

BEVERAGE RETAILER

- Continued to include diversity (both gender and racial/ethnic) in nominee snapshot
- Abbreviated environmental and social impact highlights in introductory pages
- Continued to include both diversity matrix as well as reference to gender, ethnic or national diversity in skills matrix (with additional highlighting of diversity through use of corresponding icon in board biographies)
- Retained discussion of the board as diverse group of individuals with a wide range of relevant experience, qualifications, skills, tenure, and diversity
- Included references to DEI as part of compensation committee responsibilities in committee description, though removed from risk oversight infographic

In addition, there were a few other items of note – not trends per se, but indicators of a more cautious approach to disclosure this year:

- For those who use a timeline to spotlight their corporate governance best practices, revisions may be necessary with respect to activities in previous years to de-emphasize historical DEI practices.
- Practitioners clearly took a fresh look at risk oversight discussions and revised them in broader ways than anticipated, including to board oversight of strategy and larger ERM discussions.
- Similarly, more than one company in the early filers moved away from the use of committee letters across their proxy statements.
- Discussions of ESG are being renamed and in many cases scaled back/deleted as well; companies are looking at headings closely – deleting, modifying, or adding – as they revise prior year disclosures.

Final Thoughts (For Now)

The executive order and pronouncements of the new administration have had immediate impact on DEI-related disclosures in company Annual Reports on Form 10-K and proxy statements. Companies are devoting significant time and resources to both the future of their programming and how they speak about it publicly.

The clear trend is to streamline and narrow the focus of disclosures to inclusion and/or belonging, with an emphasis on how these concepts are integral to the company and its strategic priorities. However, some companies are leaning into their existing programs and disclosures – though in many cases, these companies were already focused on equity and inclusion more than diversity per se. Discussions of DEI-related goals and commitments have almost universally disappeared for U.S. companies. Non-U.S. based companies are also tailoring their approach to take into account the variation in sentiment across regions in which they operate.

Given that companies should approach their disclosures holistically and consistently across their entire suite of reporting, we expect these trends to continue as companies issue their sustainability reports. Even though targeted stakeholder focus is broader for sustainability reporting, and many stakeholders still want to understand how companies approach what was formerly referred to as DEI, companies will be more cautious in how their programs and achievements are presented. Not only will this impact discussions within social sections, but also potentially values statements, overarching program structures, presentations of progress on goals and commitments (such as goal trackers and dashboards), and awards and recognitions.

What has not changed is stakeholders' desire to understand the context for approach and programs (the big picture) and how that drives value creation and supports a company's strategic priorities (why it is good for business).

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