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CLIENT ALERT

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DOJ's New Civil Rights Fraud Initiative: What Organizations Should Know

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The Department of Justice has launched an aggressive new enforcement strategy that could dramatically influence how organizations approach diversity programs, student policies, and civil rights compliance. On May 19, 2025, the Deputy Attorney General announced a "Civil Rights Fraud Initiative," which weaponizes the False Claims Act to target alleged civil rights violations by recipients of federal funds. This initiative represents a significant expansion of False Claims Act enforcement beyond traditional fraud schemes and into contentious areas of civil rights law that continue to evolve in the wake of landmark Supreme Court decisions.

Organizations now face potential treble damages and significant penalties not just for garden-variety fraud, but for alleged failures to comply with federal anti-discrimination laws while accepting federal dollars. This represents a seismic shift in the risk landscape for organizations that rely on federal funding—from universities and hospitals to defense contractors and research institutions. The impact could be particularly severe given that False Claims Act cases can be initiated by putative whistleblowers, creating an incentive structure that may generate substantial litigation even without direct government action. The memorandum's timing, early in President Trump's second administration, signals that civil rights enforcement with a focus on purported "reverse discrimination" will be a significant DOJ priority for the foreseeable future.

What Does The Initiative Entail?

The initiative leverages the False Claims Act—described in the memorandum as "the Justice Department's primary weapon against government fraud, waste, and abuse"—against organizations that allegedly "defraud the United States by taking its money while knowingly violating civil rights laws." It specifically targets organizations that certify compliance with civil rights laws while purportedly engaging in what the administration deems prohibited discrimination, which is the subject of much ongoing litigation.

At its core, the initiative targets two main categories:

1. Organizations accused of engaging in discrimination against protected classes while certifying compliance with civil rights laws; *and*
2. Organizations implementing diversity, equity, and inclusion (DEI) initiatives that allegedly assign "benefits or burdens on race, ethnicity, or national origin."

The memorandum specifically cites the Supreme Court's language in the Harvard affirmative action case (*Students for Fair Admissions v. President & Fellows of Harvard College*, 600 U.S. 181 (2023)), that

"eliminating racial discrimination means eliminating all of it," as well as Executive Order 14173 signed by President Trump on January 21, 2025.

What makes this initiative particularly potent is the combination of the False Claims Act's enforcement mechanisms with the inherently subjective nature of many civil rights compliance questions. The False Claims Act carries severe penalties—treble damages plus penalties that can exceed $25,000 per false claim—and includes *qui tam* provisions allowing private whistleblowers to file suits and receive a portion of any recovery. This creates a powerful financial incentive for individuals to report perceived violations, and for target organizations to both avoid the scrutiny of the administration and to settle any ensuing investigations as soon as possible. In this way, the initiative is not unlike other administration actions targeting law firms and universities in new and controversial ways, using the threat of an expensive and damaging enforcement process to try to force preemptive compliance or settlement.

The initiative will be jointly led by the DOJ's Civil Division's Fraud Section and the Civil Rights Division, with dedicated Assistant U.S. Attorneys in all 93 U.S. Attorney's Offices. This nationwide coordination mechanism represents an unusually comprehensive enforcement approach, suggesting that the government will pursue cases across geographic regions without the usual variations in enforcement priorities among different U.S. Attorney's Offices. It also involves coordination with other federal agencies that enforce civil rights requirements for federal funding recipients, including the Departments of Education, Health and Human Services, Housing and Urban Development, and Labor.

The memorandum's explicit encouragement of private *qui tam* lawsuits is notable and unusual, although consistent with another DOJ policy memorandum issued in April regarding cases against health care providers offering gender reassignment surgery.[1] By publicly signaling strong interest in these cases, the DOJ is effectively recruiting private counsel and potential whistleblowers to generate cases, multiplying the government's enforcement reach without additional resources, and again, potentially pressing on target organizations to comply in advance in order to escape potentially painful financial consequences, both in terms of damages and legal costs.

Whom does this affect?

Universities

Universities and colleges face perhaps the most direct impact from this initiative. The memorandum explicitly states that "a university that accepts federal funds could violate the False Claims Act when it encourages antisemitism, refuses to protect Jewish students, allows men to intrude into women's bathrooms, or requires women to compete against men in athletic competitions." At the very least, the latter of these purported civil rights violations, relating to policies on transgender rights, have not been found by the Supreme Court to violate any civil rights laws. Nevertheless, this language suggests that universities will face scrutiny not just for traditional DEI programs but also for their handling of campus controversies related to:

- Religious discrimination, particularly antisemitism;
- Gender identity policies regarding facilities access; *and*
- Transgender participation in athletics.

[1] *Preventing the Mutilation of American Children*, Attorney General Memo, April 22, 2025.

Naming these politically charged and highly publicized campus controversies as purported "civil rights violations" suggests potential targeting of the many institutions nationwide that have implemented progressive policies regarding gender identity in the last decade or so, particularly those related to youth. Universities are particularly vulnerable because they typically receive federal funding through multiple channels—student financial aid, research grants, and programmatic funding—creating multiple certification points that could trigger purported False Claims Act liability.

Any institution of higher education receiving federal funding—including research grants, federal financial aid, and other federal program dollars—should consider itself a potential target. The initiative appears designed to reach not just formal admissions policies (already largely addressed by the *SFFA* decision) but day-to-day campus operations, student life policies, and administrative responses to campus controversies.

Federal Contractors

Government contractors certify compliance with numerous federal non-discrimination requirements as a condition of contracting. The initiative specifically mentions that the False Claims Act is implicated when "federal contractors certify compliance with civil rights laws while knowingly engaging in racist preferences, mandates, policies, programs, and activities."

This could impact contractors across the spectrum, from defense to infrastructure to professional services. Contractor DEI programs will face particular scrutiny, especially those with explicit demographic targets or preferences. Many contractors have significantly expanded DEI initiatives in recent years, potentially creating exposure if those programs include elements that could be characterized as preferential treatment based on protected characteristics.

The risk for contractors is magnified by the nature of government contracting, where routine certifications of compliance with applicable laws occur not just at contract inception but with each invoice submission. Each such certification potentially constitutes a separate false claim, multiplying potential liability and penalties.

Federal Grant Recipients

Any organization receiving federal grants—from community health centers to research institutions to nonprofit service providers to, again, major research universities—faces exposure under this initiative. Grant recipients routinely certify compliance with federal laws and regulations, including civil rights provisions, as a condition of receiving funds.

Grant recipients may be particularly vulnerable due to complex compliance requirements that vary by funding agency and program, combined with typically more limited compliance resources compared to major contractors or universities. Many nonprofit grant recipients have also implemented DEI initiatives that could now create potential liability.

The initiative's coordination with multiple federal agencies suggests potential for synchronized enforcement actions triggered by information sharing across agencies, multiplying the risk for organizations receiving grants from multiple sources.

Health Care Providers Who Bill Federal Programs

Healthcare organizations participating in Medicare, Medicaid, and other federal healthcare programs could be targeted for both traditional civil rights violations and DEI programs. These organizations

constantly submit claims for payment that can be characterized as implicitly certifying compliance with all applicable federal laws.

Healthcare providers face unique risks due to the volume of claims they submit—potentially thousands daily—each of which could theoretically constitute a separate false claim. The healthcare sector has also been a particular focus of DEI initiatives in recent years, with many organizations implementing programs aimed at addressing health disparities and increasing workforce diversity that could now attract scrutiny.

And again, universities, as major providers of medical research and medical care in teaching hospitals, may face additional risk via their federal healthcare programs.

What are the defenses?

An FCA claim requires proof that the defendant *knew* its compliance statements were false.
As an intial matter, clients concerned about violating the FCA can take some comfort in the fact that the False Claims Act requires that, to make out a violation of the FCA, the government must show that a defendant "knowingly" submitted false claims or made false statements in making a claim to the federal government. The government will face an uphill battle in proving that, at a time of uncertainty about what DEI policies the courts consider violative of civil rights, and where the government appears to be strongly pushing the boundaries of the civil rights laws, companies have certified compliance *knowing* they were in violation thereof.

This defense may be particularly valuable given the changing landscape of civil rights law and the sometimes contradictory guidance from different agencies and administrations. Organizations that obtained legal advice supporting the legality of their programs, particularly advice that specifically addressed post-*SFFA* compliance, may have even stronger scienter-based defenses.

Significant judicial scrutiny of the scienter requirement in such cases seems likely, especially in light of the vast number of cases each year involving alleged civil rights-related violations at federally funded institutions (from racial discrimination claims in everyday employment actions to Title IX investigations) that have never before prompted False Claims Act investigations or lawsuits related to the federal funding for those institutions. Whether any organization can be proven to have "known" that it was submitting a false claim in obtaining its federal funding (even if it knew it had engaged in discrimination—a fact-intensive inquiry), seems highly uncertain.

An FCA claim under the Initiative would have to show violation of Anti-Discrimination Laws.
Title VI of Civil Rights Act of 1964 and SFFA v. Harvard
Of course, organizations may also defend against allegations by demonstrating actual compliance with Title VI, which prohibits discrimination on the basis of race, color, or national origin in programs receiving federal financial assistance. In light of the government's seemingly broad, untested interpretation of the civil rights laws in the initative memorandum, it seems reasonably likely that targeted organizations could prove their own compliance with existing law. However, determining compliance is a fact-based inquiry, which may prove an extensive (and expensive) longer-term strategy.

Moreover, the DOJ memorandum specifically cites the Supreme Court's decision in *Students for Fair Admissions*, which significantly narrowed the permissible scope of race-conscious programs. What constituted compliance prior to that decision may no longer be sufficient. The memorandum lays bare the administration's significant skepticism of race-related DEI initiatives, positing without support that "many

corporations and schools continue to adhere to racist policies and preferences—albeit camouflaged with cosmetic changes that disguise their discriminatory nature." This language suggests that DOJ intends to aggressively litigate, and to narrow, the boundaries of acceptable DEI programs (or perhaps the legality of such programs altogether) by targeting institutions that enact facially neutral policies by arguing that those policies nevertheless result in discrimination.

Title VII of Civil Rights Act of 1964

For employment-related claims, organizations may also defend by demonstrating compliance with Title VII's prohibition on employment discrimination based on race, color, religion, sex, and national origin. This includes implementing properly structured voluntary affirmative action programs that comply with EEOC guidance and relevant case law.

Organizations should recognize, however, that the current administration may interpret Title VII differently than previous administrations. While the legal standards for Title VII compliance have not formally changed, enforcement priorities and interpretations may have shifted. For example, the administration may view established diversity recruitment programs or pipeline initiatives with greater scrutiny than previous administrations.

DEI policies and programs are not necessarily unlawful.

It bears noting that, while the administration has signaled through the memorandum its intent to take direct and aggressive aim at DEI programs, that does not mean that all DEI programs violate federal law. The administration, after all, does not make or interpret that law—but it does enforce it. As the law presently stands, programs focused on expanding opportunity, outreach, and inclusion without explicit preferences based on protected characteristics are probably legal and defensible. But that will not necessarily prevent an administration that has made this a priority from investigating or bringing suit against organizations in testing and pushing the limits of the civil rights laws and its own enforcement power. Organizations should be prepared to demonstrate how their DEI efforts comply with the law, both on paper and in practice.

On March 19, 2025, the EEOC and the DOJ released guidance that provided important insight into what those agencies consider permissible and impermissible DEI programs. The guidance emphasized that "DEI initiatives, policies, programs, or practices may be unlawful if they involve an employer or other covered entity taking an employment action motivated—in whole or in part—by an employee's or applicant's race, sex, or another protected characteristic."

A critical and easily discernable distinction appears to be between programs that expand opportunity for all versus those that allocate benefits or segregate employees based on protected characteristics. Programs that focus on outreach, recruitment from diverse sources, creation of inclusive environments, and removing unnecessary barriers to participation have not been touched by the *SFAA* case, while those that establish quotas, set-aside, or explicit preferences based on protected characteristics should be examined with the help of legal counsel to ensure that they meet legal requirements; even if they do, they may face greater scrutiny, particularly by this administration and its most recent initiative. The EEOC and DOJ have indicated that this greater scrutiny extends even to employee clubs or affinity groups and other activities if they appear targeted toward specific groups.

An FCA claim must also show that any false statement was material to the government's payment decision.

In *Universal Health Services, Inc. v. United States ex rel. Escobar*, 579 U.S. 176 (2016), the Supreme Court held that False Claims Act liability based on implied certifications requires that the misrepresentation be "material" to the government's payment decision, with "materiality" subject to a "rigorous" standard. This will likely be a hotly-contested issue in any litigation resulting from any investigations under the DOJ's Initiative.

This defense may be particularly strong where:

- The alleged violations were minor or technical in nature;
- The government was aware of the organization's policies or practices and continued payment;
- The certifications in question did not specifically reference the civil rights provisions at issue; *and/or*
- The alleged violation relates to evolving or unclear legal standards (which, as discussed above, is highly relevant in the current environment).

Organizations should document instances where the government was aware of DEI or other challenged programs and continued funding without objection, as this may support arguments against materiality.

Diversity programs may be protected under the First Amendment.

For educational institutions in particular, academic freedom principles under the First Amendment may provide some defense against certain enforcement actions. Similarly, religious organizations may have defenses based on religious freedom principles where applicable.

Recent Supreme Court decisions have strengthened religious liberty protections, which may provide additional defenses for faith-based organizations. First Amendment arguments may be particularly relevant for speech-based initiatives or programs developed through faculty governance systems at universities.

What Should Organizations Do to Prepare?

Review compliance with federal anti-discrimination laws and whistleblower reporting policies.

Organizations should work with counsel conduct a thorough review of:

- All DEI programs and initiatives;
- Anti-discrimination policies and their implementation;
- Complaint handling procedures; *and*
- Whistleblower policies and reporting mechanisms

Pay particular attention to any program or policy that could be characterized as assigning "benefits or burdens on race, ethnicity, or national origin."

This review should begin with a comprehensive inventory of all DEI initiatives, including those managed at departmental or unit levels that may not have received full legal review. Special attention should be paid to:

- Recruitment and hiring practices, particularly those with diversity targets or goals;
- Promotion and advancement criteria;
- Resource allocation mechanisms, including grants, scholarships, or funding opportunities;

- Training programs, particularly those that might be characterized as treating participants differently based on protected characteristics;
- Supplier diversity programs;
- Marketing and communications materials that could sugges.t demographic preferences; *and*
- Employee Resource Groups, Business Resource Groups, and affinity groups aimed at any specific demographic

Organizations should also review their whistleblower policies to ensure they provide adequate channels for reporting concerns while also protecting against baseless or retaliatory complaints. Remember that the DOJ is specifically encouraging private whistleblowers to bring claims, creating incentives for individuals to identify potential violations. Whistleblowing activities may also be separately protected under state laws, which can provide even broader protection than federal whistleblower protections.

Document Legal Analysis and Advice

Organizations should:

- Obtain and document legal advice regarding compliance with relevant civil rights laws;
- Create contemporaneous records of compliance efforts;
- Document the legal basis for program decisions; *and*
- Consider conducting privileged audits of high-risk areas.

Documentation should address how programs comply with current legal standards, particularly in light of the *SFFA* decision and Executive Order 14173, and comply with EEOC and DOJ guidance regarding DEI-related discrimination. For existing DEI initiatives, document the non-discriminatory purposes they serve and how they are narrowly tailored to achieve those purposes without assigning benefits based solely on protected characteristics.

Importantly, organizations should consider having outside counsel conduct compliance reviews to ensure the protections of the attorney work product protection, and the attorney-client privilege. This allows for candid assessment of potential vulnerabilities while protecting sensitive analyses from discovery in potential litigation. Legal counsel should be involved early in these reviews to establish and maintain privilege.

Formalize document retention policies and plans for response to administrative subpoenas or Civil Investigative Demands (CIDs).

Preparation should include:

- Implementing or updating document retention policies;
- Developing protocols for responding to Civil Investigative Demands (CIDs) or administrative subpoenas;
- Training key personnel on document preservation requirements; *and*
- Identifying potential document custodians and data sources

Organizations should prepare for potential multi-agency investigations requiring responses to multiple document requests. This includes identifying information systems that contain relevant data, key decision-makers responsible for civil rights compliance and DEI initiatives, and developing procedures for document collection, review, and production.

Organizations should also review their document retention policies to ensure they appropriately balance legal compliance requirements with risk management concerns. While destruction of documents in

accordance with established retention policies is generally permissible, implementation of a document destruction program in anticipation of investigation could create additional legal exposure.

Investigate (via counsel, if possible) any allegations of non-compliance.
When allegations arise:

- Act promptly to investigate through counsel when possible to preserve privilege;
- Document remedial actions taken;
- Evaluate potential exposure under the False Claims Act.

Organizations should have established procedures for responding to internal complaints or allegations of discrimination, with clear escalation pathways and protocols for privileged investigations. When potential violations are identified, prompt remedial action can mitigate potential liability. In some cases, voluntary self-disclosure may be appropriate, though this decision should be made carefully with the assistance of experienced counsel, weighing potential benefits against the risk of triggering broader investigations.

The Initiative represents a significant development in the administration's plans to enforce civil rights laws for recipients of federal funds. By linking alleged civil rights violations to False Claims Act liability, the DOJ has dramatically increased the potential financial exposure for organizations with DEI and other programs that might be characterized as offering race-conscious benefits or preferences. This enforcement approach comes with significant ambiguities, particularly as organizations continue to navigate the post-*SFFA* legal landscape, but the memorandum makes clear that aggressive enforcement is anticipated in the near future.

Organizations should act now to evaluate their compliance posture and prepare for potential increased enforcement activity in this area. Those that take proactive steps to review programs, document legal analysis, and establish robust investigation protocols will be best positioned to defend against potential claims. While the initiative signals potential challenges for many DEI efforts, organizations that thoughtfully structure such programs to focus on expanding opportunity rather than allocating benefits based on protected characteristics may still be able to advance inclusion goals while managing legal risks.

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