

Department of Justice Launches “Civil Rights Fraud Initiative” to Target DEI Through False Claims Act

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On Monday, May 19, 2025, Department of Justice (“DOJ”) Deputy Attorney General Todd Blanche issued a memorandum establishing the “Civil Rights Fraud Initiative” (the “Memorandum”), in the latest signal that DOJ intends to aggressively enforce the False Claims Act in pursuit of the administration’s goals. According to the Memorandum, DOJ has launched a joint enforcement effort between the Civil Division’s Fraud Section (“Civil Frauds”) and the Civil Rights Division (“Civil Rights”), which “will utilize the False Claims Act to investigate and, as appropriate, pursue claims against any recipient of federal funds that knowingly violates federal civil rights laws.”

The Memorandum signals that DOJ intends to adopt a dramatically different interpretation of federal contractors’ and federal funds recipients’ civil rights obligations from prior administrations. For instance, the Memorandum specifically identifies universities that receive federal funding as potential targets of the Civil Rights Fraud Initiative, and outlines four examples of conduct that “could violate the False Claims Act.”

1. “Encourag[ing] antisemitism,” though neither term is defined;
2. “Refus[ing] to protect Jewish students;”
3. “Allow[ing] men to intrude into women’s bathrooms;” or
4. “Requir[ing] women to compete against men in athletic competitions.”

The Memorandum also re-emphasizes that Diversity, Equity, and Inclusion (“DEI”) initiatives are an enforcement priority for DOJ. Citing to Executive Order 14173, Ending Illegal Discrimination and Restoring Merit-Based Opportunity, the Memorandum reiterates that certifying compliance with civil rights laws while “knowingly engaging in racist preferences, mandates, policies, programs, and activities, including through [DEI] programs that assign benefits or burdens on race, ethnicity, or national origin,” also implicates the False Claims Act.

The Civil Rights Fraud Initiative may extend beyond mere civil liability. The Memorandum provides that both Civil Frauds and Civil Rights will “engage with” DOJ’s Criminal Division. The Memorandum also encourages *qui tam* litigation as a means to achieve

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DOJ's goals.

What Happens Next?

It is highly likely that in the coming weeks and months, DOJ will issue Civil Investigative Demands ("CIDs") to an increasing number of universities, public school districts, contractors, grant recipients, and other entities that receive federal funds. CIDs essentially act as subpoenas to facilitate investigation of potential False Claims Act violations, and based upon the priorities outlined in the Memorandum, such CIDs will likely demand information, documents, or interviews related to DEI, antisemitism, and trans-inclusivity policies, practices, programs, and activities.

It is similarly likely that such investigative and/or litigation activity will result in courts being asked to decide whether the administration's interpretations of federal civil rights obligations are consistent with the law. There is reason to suspect that courts may be skeptical of the administration's application of the law, as even the examples articulated in the Memorandum could be read to contradict Supreme Court precedent on the scope of "sex discrimination" under *Bostock v. Clayton County*, 590 U.S. 644 (2020), which held that Title VII of the Civil Rights Act of 1964 protects employees against discrimination based on sexual orientation or gender identity. In the meantime, however, many recipients of federal funds will likely be subject to extensive investigative efforts and potential litigation based upon DOJ's new Civil Rights Fraud Initiative.

What Federal Fund Recipients Should Do Now

The Memorandum marks the latest and most concrete signal that DOJ intends to leverage the False Claims Act to target institutions of higher education, contractors, and others that do business with the federal government that the administration alleges violate civil rights laws. Although the False Claims Act's statute of limitations extends between six and ten years, federal fund recipients can and should take immediate steps to (i) reduce the likelihood that they become the target of a federal investigation; and (ii) assess and limit the scope of liability if such an investigation does occur. For instance, organizations should:

- Conduct a thorough review of all DEI-related policies and practices to ensure that practices and programs do not differentiate based on protected characteristics. This can include hiring, employee resource groups, contracting, grant funding, university admissions, and much more.
- Assess current practices as they relate to religion-based harassment and speech. Now is the time to determine if your policies and practices make clear that religion-based harassment or discrimination are appropriately prohibited and responded to. For institutions of higher education, policies should strike a careful balance between permitting the free expression of students, faculty, and staff, and ensuring that others are free from discriminatory harassment.
- Analyze bathroom, athletics, and other trans-inclusive policies to determine the scope of potential risk, and if there are changes that could be made to reduce risk consistent with your organization's goals.
- If your organization receives a Civil Investigative Demand, closely review it and

ensure that you understand the scope of it—including understanding that receipt of a CID likely indicates an active civil fraud investigation against the organization.

In addition, depending on past practices and the scope of federal funds received, some recipients of federal funds may benefit from a preemptive review of past and current policies and practices to determine exposure, if any, to potential False Claims Act liability. The False Claims Act provides for treble damages plus penalties to the federal government, but DOJ has given credit for self-disclosure and cooperation when entities proactively disclose potential violations. Federal fund recipients should consider whether such a review and potential disclosure could be in their best interests.