

Justice Department Eliminates Disparate-Impact Liability Under Title VI

by Nicole Engisch, Alex Hontos, Jack Sullivan, and Matthew Gillespie

On December 9, 2025, the Justice Department (“DOJ”) issued a final rule eliminating disparate impact liability from its enforcement regulations for Title VI of the Civil Rights Act of 1964 (the “Final Rule”),¹ overturning a 50-year-old regulatory regime. Title VI prohibits discrimination on the basis of race, color, or national origin in any program or activity receiving federal financial assistance, which is broadly defined.

What is “disparate-impact liability” and why did DOJ make this change?

Disparate-impact liability refers to a theory of liability for discriminatory conduct that has the “effect of” discriminating against protected classes of individuals, in contrast to intentionally discriminatory acts or policies. DOJ’s move follows an April 23, 2025 executive order directing federal agencies to “deprioritize enforcement of all statutes and regulations to the extent they include disparate-impact liability” and to “repeal or amend” Title VI regulations that implement disparate-impact liability.² DOJ implemented these revisions without notice-and-comment rulemaking based on the Administrative Procedure Act’s exception for rules “relating to agency management or personnel or to public property, loans, grants, benefits, or contracts.”³

DOJ is not the only federal enforcement agency to reject disparate-impact liability in response to the April 2025 executive order. On September 15, 2025, the Equal Employment Opportunity Commission (“EEOC”) issued an internal directive instructing investigators across the country to close all pending charges based on alleged disparate impacts in employment cases, which are subject to Title VII of the Civil Rights Act of 1964.

What does the Final Rule actually do?

The Final Rule removed the “disparate-impact prohibition” to DOJ’s Title VI implementing regulations. These regulations previously prohibited federal funds recipients from “utiliz[ing] criteria or methods of administration which have the effect of subjecting

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individuals to discrimination” due to race, color, or national origin, or that “have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin.”⁴ In so doing, the Final Rule removes DOJ’s authority to pursue Title VI cases based on a theory of unintentionally discriminatory conduct that results in a disparate impact on individuals based on race, color, or national origin.

The Final Rule also specifically addressed the applicability of disparate-impact liability in certain contexts. For example, the Final Rule removed regulations prohibiting federal funds recipients from engaging in employment practices that “tend[ed] . . . to exclude persons from participation in, to deny them the benefits of, or to subject them to discrimination under the program.”⁵ Similarly, the Final Rule eliminated a restriction on federal funds recipients’ placement of facilities in locations that have the “effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination” based on protected status.⁶

In addition to repealing regulations providing for liability based on disparate impact, the Final Rule also removed the obligation for programs with a history of discrimination to take “affirmative action” to remedy the effects of such discrimination. Before the Final Rule took place, DOJ’s Title VI regulations obligated recipients of federal funds that administered programs that “previously discriminated against persons on the ground of race, color, or national origin” to “take affirmative action to overcome the effects of prior discrimination.”⁷ Even absent such discriminatory history, federal funds recipients could still “take affirmative action to overcome the effects of conditions” that limited protected classes’ participation.⁸ Under DOJ’s new Title VI regulations, this language is omitted, and the explanation to the Final Rule suggests such “affirmative action” could, in fact, lead to liability for “promot[ing] potentially illegal race, color, and national origin discrimination.”

Notably, however, the Final Rule does not foreclose the use of disparate-impact data to prove intentional discrimination—and, in fact, the Final Rule specifically provides that “data on disparate outcomes” can still serve “as a potential indicator of intentional discrimination.”⁹ To that end, the Final Rule does not undermine the existing framework for proving intentional discrimination via a facially neutral policy as expressed in *Arlington Heights* (*Village of Arlington Heights v. Metropolitan Hous. Dev. Corp.*, 429 U.S. 252, 97 S. Ct. 555 (1977)). The Court in *Arlington Heights* provided that courts look to several factors in weighing whether there is intentional discrimination, including disparate impact.¹⁰ The Final Rule does not appear to—or purport to—undermine this framework.

How should federal funds recipients respond?

The immediate effect of the Final Rule is more academic than practical: because there is no private cause of action for disparate-impact discrimination under Title VI, the Final Rule, in effect, simply memorializes DOJ’s preexisting policy not to pursue disparate-impact cases. In so doing, the Final Rule also ensures that DOJ will be forced to prove intentional discrimination even as it asserts novel discrimination theories, such as through use of “proxies” or DEI programming.¹¹ This shift could also result in unintended

consequences in other litigation: for example, False Claims Act relators may have greater difficulty pleading and proving claims based on noncompliance with federal civil rights laws without greater evidence of discriminatory intent. Regardless, by memorializing the changes in regulation, the second Trump administration has ensured that these changes will last for at least some time beyond the end of the current presidential term.

Nonetheless, while the Final Rule emphasizes the shift in civil rights enforcement in DOJ, the ongoing relevance of disparate-impact showings in intentional discrimination cases encourages continued caution by federal funds recipients to ensure their programs do not result in potential Title VI liability. To that end, federal funds recipients should continue to monitor and be mindful of the potential civil rights implications of their programming and practices. When faced with potentially hot-button issues, such as around DEI, “proxies,” or affinity groups, federal funds recipients should also fastidiously document their non-discriminatory intent and rationale to guard against potential intentional discrimination claims.

¹ 90 Fed. Reg. 57141-01 (Dec. 9, 2025).

² Executive Order 14281, 90 Fed. Reg. 17537 (Apr. 23, 2025).

³ *Id.*

⁴ 28 C.F.R. § 42.104(b)(2) (2024).

⁵ 28 C.F.R. § 42.104(c) (2024).

⁶ 28 C.F.R. § 42.104(b)(3) (2024).

⁷ 28 C.F.R. § 42.104(b)(6) (2024).

⁸ *Id.*

⁹ 90 Fed. Reg. 57141-01, 57144 (Dec. 9, 2025).

¹⁰ 429 U.S. at 265-66, 97 S. Ct. 563-64.

¹¹ See, e.g., “DOJ’s New Anti-Discrimination Guidance: Pushing the Legal Envelope?”