

Insights

DOJ REPORTEDLY LAUNCHES INVESTIGATIONS INTO GOVERNMENT CONTRACTORS' DEI PROGRAMS

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SUMMARY

Building upon prior statements and positions on the issue, the Department of Justice (“DOJ”) has reportedly opened investigations into federal government contractors and grant recipients with diversity, equity, and inclusion (“DEI”) programs for purported violations of the False Claims Act. To protect against significant expense in responding to a civil investigative demand or potential liability, federal contractors and grantees should review their programs and policies with counsel. By taking proactive steps, federal contractors and grantees can assess and manage the risks of increased exposure.

According to a report from The Wall Street Journal, the DOJ is using the False Claims Act to investigate government contractors with DEI programs, reportedly demanding documents from companies such as Verizon. As we reported earlier, this is based on an executive order from the Administration entitled “Ending Illegal Discrimination and Restoring Merit Based Opportunity” (“EO”). That EO’s stated purpose was to direct the federal government to take action against DEI programs, which the EO asserts involve “illegal” preferences and discrimination. Notably, the EO alludes to potential liability for federal contractors under the Federal Claims Act for having these DEI programs.

FALSE CLAIMS ACT OVERVIEW

The False Claims Act, 31 U.S.C. § 3729 *et seq.*, imposes civil liability on companies and individuals who knowingly submit, or cause to be submitted, a false claim for payment to the federal government. Under the *qui tam* provisions of the False Claims Act, private persons can file claims on behalf of the government. These private persons are referred to as “relators.” Relators are typically whistleblowers and can be awarded up to 30% of any amount recovered by the government. Violations of the False Claims Act can lead to severe penalties, including treble damages (actual damages multiplied by three), statutory penalties of up to \$28,619 per false claim, debarment, and suspension. Additionally, responding to a False Claims Act suit or investigation

can lead to significant costs, distractions, and reputational damage, regardless of the ultimate outcome of the dispute.

EXECUTIVE ORDER AND IMPLEMENTING DOJ MEMORANDA

The False Claims Act only applies to material misrepresentations or omissions. The EO seeks to overcome this requirement by instructing executive agencies to include a term in every federal government contract and grant that requires the other party (1) “to agree that its compliance in all respects with all applicable Federal anti-discrimination laws is material to the government’s payment decisions for purposes” of the False Claims Act and (2) “to certify that it does not operate any programs promoting DEI that violate any applicable Federal anti-discrimination laws.” The risk of the government utilizing the False Claims Act to target companies with DEI programs subsequently increased with the issuance of two memoranda from the DOJ.

On May 19, 2025, the DOJ issued a [memorandum](#) with the subject “Civil Rights Fraud Initiative.” In it, the DOJ asserted that “[o]ne of the most effective ways” to enforce the federal civil rights laws “is through vigorous enforcement of the False Claims Act.” As an example, the DOJ stated that “[t]he False Claims Act is . . . implicated whenever federal-funding recipients or contractors certify compliance with civil rights laws while knowingly engaging in racist preferences, mandates, policies, programs, and activities, including through DEI programs.” As such, the Deputy Attorney General created the “Civil Rights Fraud Initiative” to “investigate and, as appropriate, pursue claims against any recipient of federal funds that knowingly violates federal civil rights laws.”

Further, on July 29, 2025, the Office of the Attorney General issued a [memorandum](#) entitled “Guidance for Recipients of Federal Funding Regarding Unlawful Discrimination.” That memorandum states that “[t]he use of terms such as ‘DEI,’ ‘Equity,’ or other euphemistic terms does not excuse unlawful discrimination or absolve parties from scrutiny regarding potential violations.” Further, the Attorney General argues that “[u]sing race, sex, or other protected characteristics for employment, program participation, resource allocation, or other similar activities, opportunities, or benefits, is unlawful.”

Although there are several arguments against False Claims Act liability, these memoranda demonstrate that companies could be at risk based on their employment practices.

RECENT DEVELOPMENTS AND KEY NEXT STEPS

Given the government’s recent memoranda and reports of active investigations, the risk that additional government contractors or grant recipients could be subject to False Claims Act scrutiny for DEI initiatives remains high. Moreover, federal government contractors or grantees that have had new FCA clauses added to their federal contracts or grants should take steps to determine and manage the increased risks of new investigations.

Accordingly, government contractors and grant recipients would be well served to review their programs with legal counsel to ensure compliance with relevant provisions of law. Our team at BCLP stands ready to assist you in all steps of the process—whether that is performing a compliance review or responding to an inquiry from the government.

MEET THE TEAM



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