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New DOJ Civil Rights False Claims Act Initiative: Announcing Intent for Aggressive Fraud Enforcement of Administration's Positions on Civil Rights

Client Alerts

May 22, 2025
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On May 19, 2025, United States Deputy Attorney General Todd Blanche circulated a memo to the Department, announcing the establishment of the Civil Rights Fraud Initiative, an effort aimed at leveraging the civil False Claims Act (FCA) and its *qui tam* provisions, which authorize whistleblowers to bring federal civil rights enforcement against entities who "defraud the United States by taking its money while knowingly violating civil rights laws." This multi-component initiative, co-led by the Fraud Section of the Civil Division and the Civil Rights Division, represents a new direction for the government's traditional FCA enforcement efforts. It potentially exposes corporations, universities, and nonprofit organizations to both civil and criminal investigations, and even liability, for activity that was not scrutinized by previous Administrations.[1] This announcement also encourages private citizens across the country to initiate their own lawsuits based on the civil FCA's *qui tam* provisions, under which relators may share in any monetary recovery resulting from such a case.

Background

Under the civil FCA, any person, organization, or entity that knowingly submits, or causes to be submitted, false claims to the government, is subject to significant civil liability, including **treble damages** and penalties. 31 U.S.C. § 3729 *et seq*. Traditionally, this statute has been used to target organizations or individuals who have made false representations to the government in the context of a government contract—such as lying about a contractor's capabilities or services—or who have made misrepresentations in an effort to obtain a government grant. The Deputy Attorney General's memo signals an intent to use the FCA to initiate enforcement against federal contractors and grantees that knowingly violate civil rights statutes—including "Title IV, Title VI, and Title IX, of the Civil Rights Act of 1964." This initiative aligns with the White House's efforts to target private sector diversity, equity, and inclusion (DEI) programing that it deems violative of federal civil rights laws.[2]

The Deputy Attorney General's memo builds on President Trump's day 1 Executive Order, *Ending Illegal Discrimination and Restoring Merit-Based Opportunity.* Executive Order 14173 directed federal agencies to seek certification from any federal contractor or grant awardee that it "does not operate any programs promoting DEI that violate any applicable Federal anti-discrimination laws."[3] The Executive Order also requires those organizations to affirmatively acknowledge that their compliance with federal civil rights laws is "material to the government's payment decisions" under the FCA. Importantly, although the order takes aim at "illegal DEI" and programs "promoting DEI," the Executive Order does not define those terms. *See National Association of Diversity Officers in Higher Education et al. v. Trump et al.,* No. 1:25-cv-00333 (D. Md. Feb. 21, 2025).[4] This ambiguity creates risk for organizations that receive federal funds as they attempt to determine what might subject them to investigation or a potential *qui tam* suit under the Deputy Attorney General's new initiative.

Indeed, with the new Civil Rights Fraud Initiative, the government is taking advantage of a powerful tool to enforce private sector compliance with Executive Order 14173 and influence the internal operations of any organization that receives federal funds. Entities found to be making a "false certification" about their DEI practices or other activities the Administration views as running afoul of federal antidiscrimination laws could face significant financial, and even potentially criminal, liability. Deputy Attorney General Blanche has posited that, in his view, a university in receipt of federal funds could face FCA liability, and its accompanying treble damages, if "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." It remains to be seen whether courts would agree that these types of actions would amount to a "violation of applicable Federal anti-discrimination laws" such that FCA liability for a false certification could attach, but the Deputy Attorney General's words make clear that the Administration is taking a very broad view of the certification requirement and accompanying potential for FCA liability.

Furthermore, under this initiative, entities certifying compliance with civil rights laws under Executive Order 14173 could face liability for maintaining racial "preferences, mandates, policies, programs, and activities," including "diversity, equity, and inclusion (DEI) programs that assign benefits or burdens on race, ethnicity, or national origin." It is unclear precisely which activities under this framework will capture the attention of the Civil Rights Fraud Initiative, but it is clear that this will encompass conduct that was traditionally not the target of enforcement through the FCA.

Implications

Given the scope of this effort, the possible risks facing recipients of federal funds are both broad and deep. As discussed, government contractors or grant recipients found to have violated the FCA are exposed to **treble damages** and significant penalties in civil cases, including the possibility of debarment as a federal contractor. But entities found to have intentionally falsified claims to the government could also face *criminal* penalties under the criminal False Claims Act, 18 U.S.C. § 287,

potentially exposing them and their representatives to additional, hefty fines and imprisonment. Indeed, the risk of criminal enforcement through this initiative is apparent, as the Deputy Attorney General's memo expressly contemplates involvement from the DOJ's Criminal Division. The initiative's broad enforcement mandate exposes any entity that submits claims to the government for payment—be it a university, private company, or non-profit—to a host of powerful investigatory measures, including civil investigative demands (CIDs), grand jury subpoenas, and search warrants, among others. For that reason, FCA investigations and inquiries are resource intensive and expose organizations to a great deal of risk legally, monetarily, and reputationally. Those risks are similarly present if the government or a whistleblower files an FCA suit against an entity in federal court. Even unsuccessful enforcement actions are expensive, can result in exclusion from government contracts and grants through suspension or debarment, and can prove reputationally harmful if made public.

To navigate the risks associated with the Civil Rights Fraud Initiative, we recommend that clients take the following steps:

1. **Review Federal Contracts and Grants**: Ensure that certifications and representations made in connection with federal funding accurately reflect compliance with federal civil rights law.
2. **Conduct a Compliance Review**: Assess existing policies and procedures to ensure alignment with federal requirements. Focus on areas such as non-discrimination, hiring and training policies, diversity commitments, and reporting obligations.
3. **Enhance Training Programs**: Provide training for employees and organizational leadership on the consequences of non-compliance, including FCA liability.
4. **Establish Robust Internal Whistleblower Mechanisms**: Create or refine confidential reporting channels to encourage internal reporting of concerns.
5. **Engage Legal Counsel**: Consult with experienced counsel to evaluate risks, respond to DOJ inquiries, or address potential violations promptly.

Footnotes

[1] The memo specifically calls out colleges and universities as potential targets of this enforcement as recipients of federal funds. While the education sector is clearly the first focus of this task force, this memo applies broadly and could affect any recipient of federal funds.

[2] The Administration's efforts targeting DEI programs and initiatives have been extensive, and include multiple executive orders, agency directives, and memoranda. *See e.g.*, Executive Order 14173, *Ending Illegal Discrimination and Restoring Merit-Based Opportunity*,(January 21, 2025); Executive Order 14151, *Ending Radical and Wasteful Government DEI Programs and Preferences*,

(January 20, 2025); *Ending Illegal DEI and DEIA Discrimination and Preferences*, Department of Justice Memorandum (February 5, 2025); *Dear Colleague Letter*, Department of Education (February 14, 2025).

[3] Note that, on April 15, 2025, the District Court for the Northern District of Illinois enjoined the Department of Labor from enforcing requirements that contractors certify that their compliance with anti-discrimination laws is material for FCA purposes. *See Chicago Women in Trades v. Trump*, 1:25-cv-02005, (N.D. Ill. 2025); *see also San Francisco Unified Sch. Dist. v. AmeriCorps,* No. 25-CV-02425-EMC, 2025 WL 974298 (N.D. Cal. Mar. 31, 2025) (enjoining certification provision as to AmeriCorps grants).

[4] The preliminary injunction issued by the District Court in this case against the EO's certification provisions was stayed, pending appeal, by the U.S. Court of Appeals for the Fourth Circuit on March 14, 2025. *National Association of Diversity Officers in Higher Education, et al. v. Trump, et al.*, No. 25-1189 (4th Cir. 2025).

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