

New Year, Renewed Focus on False Claims Act Risks for Recipients of US Funds

Client Alerts

January 9, 2026

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In the waning hours of 2025, news broke that the Department of Justice (“DOJ”) had sent Civil Investigative Demands (“CIDs”) to investigate and potentially bring actions against federal contractors, grant recipients, and other entities receiving federal funds for maintaining so-called diversity, equity, and inclusion (“DEI”) programs. Reporting notes that DOJ issued CIDs pursuant to its False Claims Act (“FCA”) authority (31 U.S.C. § 3729-3733) to companies across a variety of sectors of the US economy, including automotive, pharmaceutical, defense, and utilities.

According to the Trump Administration, DEI programs can violate federal civil rights laws, and the Administration has taken several steps to increase the harmful consequences for private-sector organizations that engage in “illegal DEI.” For example, as we have described in prior client alerts, the Administration has required certifications to be inserted into federal contracts and grant awards providing that the recipient of federal funds “does not operate any programs promoting DEI that violate any applicable Federal anti-discrimination laws,” and it launched a Civil Rights Fraud Initiative in May 2025 focused on enforcement against entities whose DEI efforts violate civil rights laws. The Administration has also taken an expansive view of what qualifies as “illegal DEI,” issuing guidance from agencies including DOJ and the EEOC and directing legal changes such as the revocation of EO 11246 (Equal Employment Opportunity).

This unprecedented use of the FCA creates significant legal and financial risks for organizations that hold federal contracts or subcontracts, receive federal grants or financial assistance, make certifications regarding compliance with anti-discrimination laws, and continue to operate certain types of DEI programs or similar initiatives under different names. Federal contractors that hold state contracts imposing supplier diversity or similar requirements may also be at risk.

Companies operating internationally face particular challenges, as they will likely be expected to have in place measures to promote DEI in jurisdictions such as the European Union (“EU”), the United Kingdom (“UK”) and elsewhere. The difficulty is especially acute for federal contractors that also supply the UK and EU governments, who typically assess an organization’s “social value” (often expressly including DEI commitments) as part of procurement processes. The dissonance between expectations creates a particular risk for global companies who may be operating programs in

compliance with expectations in the UK and EU in ways that may put them at odds with the current US enforcement posture.

DOJ has broad statutory authority to issue CIDs in support of FCA investigations. 31 U.S.C. § 3733 authorizes CIDs “[w]henever . . . [DOJ] has reason to believe that any person may be in possession, custody, or control of any documentary material or information relevant to a false claims law investigation. . . .” The resulting CIDs may request documents, require that interrogatories be answered, and/or call for oral testimony.

CID recipients must decide very quickly whether to comply, object to some or all of the requests, petition to modify or set aside the CID itself, or some combination thereof. A complying entity may negotiate with DOJ, seeking limitations on the requests, prioritization of requests, or extensions of the return date for production, which is typically set just 20 days from the issuance of the CID. To the extent some or all of the requests in the CID fail to meet the standards set forth in 31 U.S.C. § 3733(b)(1) (applying the standards applicable to grand jury subpoenas and to civil discovery requests under the Federal Rules of Civil Procedure “to the extent that applicable of such standards to any such demand is appropriate”), a recipient entity may object. Objections as to breadth or a lack of reasonable particularity may challenge the temporal scope, subject matter description, or types of documents or custodians sought by the requests. Objections must be lodged by the return date set forth in the CID, typically within 20 days of the CID’s issuance, unless a later date is negotiated with DOJ.

Moreover, CID recipients have a narrow window—either 20 days from service of the CID, or prior to the return date if it is earlier—to petition for judicial relief, unless counsel negotiates a written extension in advance of that date. 31 U.S.C. § 3733(j)(2). Grounds for these petitions include “failure of the demand to comply with the provisions of this section or upon any constitutional or other legal right of privilege of such person.” 31 U.S.C. § 3733(j)(2)(b). For example, a petition might argue that factual subject matter sought by the CID is not covered by the FCA, rendering DOJ without authority to issue the CID. A CID might also be successfully quashed on the grounds that it was issued in retaliation for the exercise of First Amendment rights. One can also petition for a modification to protect sensitive information such as third-party information subject to a confidentiality agreement.

These early determinations are consequential, and waiting until a CID is in hand leaves entities with little time to seek and consult with the experienced legal counsel who can guide them. Proactive assessments of compliance with federal anti-discrimination law in light of legal and enforcement developments during this Administration, conducted under privilege, provide federal contractors and funding recipients with the necessary information to assess risk and make any recommended changes. Effective internal subpoena processing and response protocols maximize the time the entity has to consult with counsel. And, especially for those entities in industries of particular focus by the Administration, affirmatively educating stakeholders on the options for potential response

should a CID land facilitates rapid decision-making should it be necessary. Jenner & Block attorneys stand ready to assist in each of these areas.

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