

ALERT

DOJ Civil Rights Fraud Initiative Targets "Illegal DEI" Programs via the False Claims Act

May 30, 2025

The U.S. Department of Justice (DOJ) announced the creation of the Civil Rights Fraud Initiative in a Memorandum issued on May 19, 2025. According to the Memorandum, the Initiative is an enforcement effort that will use the federal False Claims Act (FCA), 31 U.S.C. § 3729 *et seq.*, to pursue recipients of federal funding – including federal contractors and grant recipients like colleges and research institutions – who allegedly falsely certify their compliance with federal civil rights laws. While the FCA has long been used to police those who falsely certify compliance with various laws, the repeated emphasis on DEI issues and explicit announcements that this is a priority for DOJ suggests these developments should be closely monitored.

The False Claims Act

The FCA is a potent tool used by the government to recover funds paid out as a result of fraud. The statute imposes civil liability on any person who knowingly presents a false claim for payment of government funds or makes a false statement that is material to a claim for payment of government funds. Because FCA violations can result in treble damages and significant penalties for each false claim, it is aptly referenced in the May 19 Memorandum as the Justice Department's "favorite weapon against fraud, waste, and abuse."

The FCA also enables whistleblowers (or "relators") to file *qui tam* actions on behalf of the government and receive a share of any money recovered in the litigation. Under the *qui tam* provisions, a

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Practice Areas

Civil Fraud, False Claims, *Qui Tam* and Whistleblower Actions

DEI Counseling

Diversity, Equity, and Inclusion (DEI) Counseling and Support

Oversight, Investigations & White Collar Enforcement

White Collar Defense & Government

relator files a complaint under seal and serves the Justice Department. DOJ – either Main Justice, the local U.S. Attorney’s Office, or both – must then investigate the claims before ultimately determining whether to take over the case. Many times, a company only becomes aware of a pending *qui tam* action or the existence of an FCA investigation when it receives a Civil Investigative Demand (CID) – an official request from DOJ to produce documents, answer interrogatories, or appear for deposition. While the government ultimately declines the vast majority of *qui tam* actions, responding to CIDs and enduring FCA investigations can be burdensome, disruptive to operations, expensive, and result in negative reputational consequences for organizations.

The Civil Rights Fraud Initiative

The DOJ Initiative stems from President Trump’s January 21, 2025, Executive Order, “Ending Illegal Discrimination and Restoring Merit-Based Opportunity,” discussed in an earlier alert and subsequent updates on the ensuing litigation. The Initiative is also in direct response to Attorney General Bondi’s February 5, 2024 “Ending DEI and DEIA Discrimination and Preferences” memorandum directing the Civil Rights Division and the Office of Legal Policy to submit a report with recommendations for measures to “end illegal discrimination and preferences, including policies relating to DEI and DEIA.”

As set out in the recent Memorandum:

- The Initiative will use the FCA to investigate and pursue claims against any recipient of federal funds that violates federal civil rights laws. The Memorandum cites “a university that accepts federal funds [that] 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” as an example. However, the Initiative will target all recipients of federal funds who engage in “racist preferences, mandates, policies, programs, and activities, including through diversity, equity, and inclusion (DEI) programs that assign benefits or burdens on race, ethnicity, or national origin.”
- The DOJ’s Civil Rights Division and the Civil Division’s Fraud Section will lead the Initiative. In addition to regularly

coordinating and sharing information to advance investigations amongst themselves, they will also engage, as appropriate, with DOJ's Criminal Division and other federal agencies – including the Departments of Education, Health and Human Services, Housing and Urban Development, and Labor.

- Each of the 93 U.S. Attorney's Offices will appoint an Assistant U.S. Attorney to advance the Initiative.
- DOJ expressly encourages anyone with knowledge of discrimination by federal funding recipients to report that information to federal authorities and "strongly encourages" whistleblowers to report violations and file FCA actions.

What's Next?

The Initiative and its encouragement of *qui tam* actions will likely lead to a significant increase in investigations and, eventually, litigation relating to DEI initiatives and should prompt critical analysis of all DEI-related policies and practices by federal funding recipients. If the Initiative is anything like past DOJ initiatives (like the Civil Cyber Fraud Initiative), the relators' bar will mobilize quickly. Current or former employees who feel like they were illegally fired, passed up for promotion, or disadvantaged based on protected traits comprise only a portion of the long list of potential relators who may explore *qui tam* actions or FCA retaliation claims. Additionally, already-filed *qui tam* actions alleging civil rights-related fraud may receive additional DOJ attention and be viewed as early opportunities to signal to contractors and grant recipients that the Initiative will be actively enforced.

DOJ will also look to open investigations when it suspects potential civil rights fraud. In addition to relying on agencies and Inspectors General to report suspected fraud, DOJ may look to journalists and social media to identify potential civil rights fraud. Indeed, Harmeet Dhillon, the Assistant Attorney General Civil Rights Division, recently identified social media platforms like X as potentially presenting opportunities for journalists and others to provide information that DOJ might use as a starting point for an investigation.

Whether FCA allegations are the result of a *qui tam* or a DOJ original investigation, CIDs will follow. As CIDs can be quite broad, companies should proceed cautiously and pursue opportunities to learn more from DOJ about the investigation's focus and, when possible, negotiate a narrower scope or a staged production schedule. DOJ's desire to demonstrate the Initiative's success may also present opportunities for expedited resolutions. While a quick settlement could avoid much of the expense associated with an FCA investigation and litigation, reputational and other collateral consequences must also be closely considered.

The Initiative's use of the FCA – and DOJ's explicit encouragement of relators – to investigate and prosecute federal-funding recipients that maintain illegally discriminatory DEI programs implicates various legal issues, as the DEI Executive Order requires grant recipients and contractors to make DEI-related certifications and agree that compliance with anti-discrimination laws is material. As we've discussed in multiple publications concerning the Trump Administration's efforts to root out unlawful DEI, as the Administration continues to roll out enforcement efforts and define what it considers to be illegal DEI, it is essential for higher education institutions, other federal funding recipients covered by Title VI, and private companies to continually monitor developments and be prepared to address the potential risks of noncompliance with evolving requirements. We have outlined several key considerations that may help guide efforts to ensure compliance.

Organizations should also be ready to respond to *qui tam* actions or internal complaints by purported whistleblowers, including by:

- Creating or promoting existing whistleblower reporting hotlines or other avenues for potential whistleblowers to raise issues or concerns internally.
- Promptly investigating any allegations of misconduct, taking appropriate remedial actions, making any required disclosures, and evaluating (with counsel) whether voluntary disclosure may be in the organization's best interest.
- Meaningfully engaging, as much as possible, with the whistleblowers to ensure they feel their concerns are heard and addressed.
- Not taking any adverse or negative employment actions against whistleblowers for raising issues or concerns.

Wiley has a team of skilled practitioners with knowledge and experience in relevant areas (including Employment & Labor, Litigation, Government Contracts, and White Collar Defense & Government Investigations) to help private-sector businesses navigate changes to DEI and related federal policies, conduct internal investigations, assess risks under the False Claims Act, and respond to government investigations.