

PUBLICATION

DOJ Expands DEI Crackdown with New Civil Rights Fraud Initiative Centered on False Claims Act Enforcement

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In our prior client alert, we examined the growing risk that the Department of Justice (DOJ) would deploy the False Claims Act (FCA) to pursue entities that receive federal funds and operate Diversity, Equity and Inclusion (DEI) programs viewed as discriminatory under federal civil rights laws. On May 19, 2025, the DOJ formalized that risk, launching a new Civil Rights Fraud Initiative via a memorandum issued by Deputy Attorney General Todd Blanche.

This initiative signals a dramatic escalation in FCA enforcement and represents the DOJ's clearest statement yet that it intends to treat violations of civil rights laws as fraud on the federal government.

Although the DOJ has previously brought FCA enforcement actions against federal funds recipients who falsely certified compliance with federal standards, including anti-discrimination, the DOJ has never done so at the scale proposed in this initiative.

And while the Supreme Court has recently curtailed the power of federal prosecutors who bring fraud cases using novel theories involving attenuated economic harm, the high court's decision on May 22, 2025, in *Kousisis, et al. v. United States*, makes clear that prosecutors may still have the leeway to bring the novel sort of cases contemplated in the Deputy Attorney General's memorandum. (Baker Donelson will publish a separate client alert on the *Kousisis* case.)

What the Civil Rights Fraud Initiative Does

The initiative establishes a coordinated, department-wide framework to investigate and bring FCA cases against recipients of federal funding who certify compliance with nondiscrimination laws while allegedly engaging in unlawful practices. The DOJ has made clear that it will target, among other things:

- Institutions that allow individuals to use bathrooms or compete in sports based on gender identity rather than biological sex;
- DEI programs or policies that assign benefits or burdens based on race, national origin, or other protected characteristics; and
- Educational institutions or employers that fail to protect against antisemitism or related civil rights violations.

Every U.S. Attorney's Office will designate a Civil Rights Fraud Coordinator to identify and pursue such cases in coordination with the Civil Rights Division and the Civil Division's Fraud Section. The DOJ will also partner with agencies such as the Departments of Education, Health and Human Services, Housing and Urban Development, and Labor, as well as state attorneys general and local enforcement bodies.

Renewed Emphasis on the False Claims Act

At the heart of the initiative is the DOJ's use of the False Claims Act, a powerful civil fraud statute that allows the government – and qui tam whistleblowers – to pursue entities that submit false certifications or statements to obtain or retain federal funds. If a university, health system, nonprofit, or contractor certifies compliance with civil rights laws while knowingly operating unlawful DEI programs, the DOJ may argue that each claim for payment constitutes a false claim.

Liability under the FCA brings treble damages, substantial penalties, and reputational consequences. Importantly, organizations should also understand that certifications of compliance with Title VI, Title IX, Section 1557 of the ACA, and similar provisions are common conditions of participation in federally funded programs.

Available Defenses and Legal Challenges

Although the Civil Rights Fraud Initiative raises the stakes for federal funding recipients, the DOJ's theory of liability may face substantial legal hurdles, as discussed in our prior alert.

First, causation remains a core requirement of any FCA case. DOJ must prove that the allegedly false certification caused the government to pay funds it otherwise would not have. In many DEI contexts, the link between a certification and a specific payment decision may be tenuous or indirect.

Second, the Supreme Court's 2023 decision in *United States ex rel. Schutte v. SuperValu Inc.* clarifies that FCA liability turns on the defendant's subjective knowledge. If an organization reasonably believed that its DEI policies complied with federal law – even if DOJ later disagrees – that belief may defeat the required scienter showing.

Third, under the Supreme Court's ruling in *Universal Health Services, Inc. v. United States ex rel. Escobar*, the government must show that the false statement was material to its decision to pay. If the federal government was aware of an institution's DEI policies and continued payments regardless, that evidence may cut strongly against materiality.

Finally, there may be significant constitutional challenges, particularly under the First Amendment, where the government seeks to penalize public statements, ERGs, or training programs that express support for DEI goals. The Eleventh Circuit's decision in *Honeyfund.com v. Florida*, striking down Florida's anti-DEI restrictions on free speech grounds, may serve as persuasive precedent.

What Organizations Should Do Now

Given the DOJ's expanded initiative, all recipients of federal funding – whether in education, health care, research, housing, or federal contracting – should promptly assess potential areas of risk.

Organizations should review DEI programming, civil rights compliance structures, and any certifications made to federal agencies. Special attention should be given to program components that allocate benefits or impose restrictions based on protected characteristics, or that could be construed by regulators as discriminatory.

We also recommend reviewing and, where appropriate, updating internal training, auditing, and reporting procedures – particularly those involving compliance with Title VI, Title IX, Section 1557, and related statutes.

How Baker Donelson Can Help

Baker Donelson is advising clients across sectors on how to navigate this fast-evolving enforcement environment. Specifically, we are helping clients:

- Conduct internal reviews of DEI, Title VI/IX, and Section 1557 compliance;
- Evaluate FCA and civil rights exposure and potential whistleblower vulnerabilities;
- Prepare responsive messaging and documentation strategies;
- Defend against government investigations and civil enforcement actions; and
- Challenge government enforcement efforts that raise constitutional or statutory concerns.

If you have questions about how the DOJ's Civil Rights Fraud Initiative may affect your organization or need assistance preparing for potential scrutiny, please contact your Baker Donelson attorney or a member of our [Government Enforcement and Investigations](#) or [Labor & Employment](#) teams.