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NEW DOJ INITIATIVE SEEKS TO IMPOSE CIVIL FALSE CLAIMS ACT LIABILITY ON FEDERAL-FUNDING RECIPIENTS THAT CONTINUE DEI EFFORTS IN DEFIANCE OF CURRENT ADMINISTRATION POLICY

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The U.S. Department of Justice announced a sweeping enforcement initiative Monday that should cause any organization that receives federal funds to carefully evaluate its policies concerning diversity, equity, and inclusion (DEI). The initiative encourages federal prosecutors to seek civil liability under the False Claims Act against any organization whose DEI policies are deemed to be discriminatory on the basis of race or sex. It also encourages private individuals to do the same, greatly increasing the exposure of such organizations to costly litigation and potential civil penalties.

In a memorandum to all federal prosecutors, Deputy Attorney General Todd Blanche announced the DOJ's "Civil Rights Fraud Initiative," aimed at federal-funding recipients who "knowingly engage in racist preferences, mandates, policies, programs, and activities, including through [DEI] programs that assign benefits or burdens on race, ethnicity, or national origin." The initiative primarily targets colleges and universities, noting that "a university that accepts federal funds could violate the False Claims Act when 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."

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The False Claims Act was passed during the Civil War to combat fraud on the government by dishonest contractors. The current version of the law imposes treble damages and other penalties on anyone who knowingly presents a false or fraudulent claim for payment by the government or knowingly makes a false statement in connection with such a claim. Significantly, lawsuits can be brought not only by federal prosecutors, but also by private citizens, who are encouraged to do so by the chance of receiving a portion of the government's recovery in successful actions.

The DOJ's newly announced initiative relies on the "false certification" doctrine of recovery under the False Claims Act. Under that doctrine, a federal funding recipient who certifies compliance with a statute or other law as a prerequisite to payment can be held liable for a false claim if it knowingly violates the statute or law, even if it complies with all other conditions of its agreement with the government. In this case, any organization that certifies compliance with federal civil rights laws risks liability if it engages in conduct the current administration deems to be discriminatory. That includes continuing DEI programs and other initiatives that were allowed—and indeed encouraged—under previous administrations.

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The DOJ memorandum directs federal prosecutors to “aggressively pursue” claims against organizations whose policies and programs the administration deems to be discriminatory. Significantly, it also “strongly encourages” private individuals to pursue such claims on their own, noting that they may share in any monetary recovery as a result of such actions.

While the initiative appears primarily focused on federally funded colleges and universities, any company or other entity that receives money from the federal government is a potential target. All organizations should evaluate their policies and procedures and carefully consider the risks of adopting or continuing programs that run afoul of the current administration’s approach to civil rights.

Werther & Mills attorneys have extensive experience litigating cases under the False Claims Act and advising organizations of all sizes with respect to the legal risks of their programs, policies, and procedures.

A full copy of the May 19, 2025 DOJ memorandum can be found here:
[Deputy Attorney General Blanche Memo: Civil Rights Fraud Initiative.](#)