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DOJ Announces First DEI False Claims Act Settlement With IBM

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On April 10, 2026, the Department of Justice (DOJ) announced the first settlement for alleged violations of the False Claims Act (FCA) related to diversity, equity and inclusion (DEI) employment practices. Following DOJ's investigation, International Business Machines Corporation (IBM) agreed to pay nearly $17.1 million to resolve allegations that it certified compliance with anti-discrimination requirements across its federal contracts, while knowingly maintaining discriminatory employment practices.

As we have previously written about (see our posts from January 23, 2025, June 24, 2025, and August 6, 2025), the legal landscape governing DEI-related employment practices continues to evolve rapidly. The IBM settlement is the first of its kind under the Civil Rights Fraud Initiative announced by DOJ just under a year ago and represents the first DOJ resolution to fulfill the Trump administration's promises to use an expanded theory of FCA liability to enforce companies' compliance with anti-discrimination laws. The settlement underscores the administration's expansive and, at times, unsettled view of the contours of DEI-related FCA enforcement, while raising significant questions about the practical longevity of existing DEI initiatives and how companies and federal contractors will respond.

IBM settlement allegations

DOJ alleged that IBM falsely claimed compliance with anti-discrimination requirements in its federal contracts by maintaining practices that discriminated against employees and applicants based on race, color, national origin and/or sex. The settlement agreement identified four specific practices that the government alleged violated federal anti-discrimination laws:

- Compensation adjustments, including a "diversity modifier," that tied bonus or incentive pay to the achievement of certain demographic targets.
- Practices that altered hiring eligibility based on protected characteristics, such as differing interview panels for diverse and nondiverse candidates.
- Race- and sex-based demographic goals for business units that informed personnel decisions.
- Mentorship, training and leadership development programs with eligibility formally restricted by race, sex or national origin.

DOJ also alleged that IBM allocated costs associated with these programs to its federal contracts and sought reimbursement while simultaneously certifying compliance – a linkage that converted what might otherwise be an employment law matter into an actionable FCA claim.

IBM agreed to pay $17,077,043, including civil penalties. While IBM received formal cooperation credit for its early disclosure, assistance with the damages calculation and voluntary remediation, the damages multiplier still exceeded the 2x figure commonly seen in FCA settlements.

DEI-related framework

The Trump administration has issued several directives that have laid the groundwork for its DEI-related investigations and enforcement.

- On January 21, 2025, President Donald Trump issued Executive Order 14173, "Ending Illegal Discrimination and Restoring Merit-Based Opportunity," that revoked President Lyndon B. Johnson's Executive Order 11246, the foundational affirmative action framework for federal contractors first issued in the wake of the Civil Rights Act of 1964. The 2025 executive order, which extends beyond federal contracting, directs federal agencies to ensure contractors and grantees cease "illegal DEI" programs (a term left undefined in the order) and certify compliance with federal anti-discrimination laws.

- On May 19, 2025, DOJ launched the Civil Rights Fraud Initiative, announcing its intention to use the FCA to target federal contractors and grant recipients whose DEI programs "assign benefits or burdens" on the basis of race, ethnicity or national origin. Notably, while the Civil Rights Fraud Initiative was announced as a co-led initiative

between the Civil Fraud Section and the Civil Rights Division – DOJ's primary enforcement vehicle for violations of Title VII – the IBM settlement did not include a signature from a Civil Rights Division representative.

- In July 2025, a DOJ memo titled "Guidance for Recipients of Federal Funding Regarding Unlawful Discrimination" provided internal DOJ guidance that entities receiving federal funds must not discriminate on the basis of protected characteristics.

- Most recently, on March 26, 2026, Trump signed Executive Order 14398, "Addressing DEI Discrimination by Federal Contractors," which directs all executive departments and agencies to acknowledge the financial materiality of their anti-discrimination obligations. The order also mandates that all federal contracts and subcontracts include a new clause prohibiting "racially discriminatory DEI activities," a term defined more expansively than the language set forth in Executive Order 14173.

Future FCA liability

The settlement confirms that DOJ is prepared to deploy the FCA as an active enforcement mechanism against companies with DEI programs the government characterizes as "discriminatory," and that voluntary compliance with FCA investigations does not preclude significant damages recoveries. Recent executive orders compound this exposure by requiring contractors to acknowledge that their compliance with anti-discrimination obligations is "material to the Government's payment decisions" under the FCA – embedding the FCA's materiality element directly into the contractual framework. Although this tactic has yet to be tested in court, it may significantly heighten the risk of government inquiries and litigation for federal contractors and other recipients of federal funds.

It is also worth noting that the covered conduct period in the IBM settlement begins in January 2019, a start date that predates both the current administration's executive orders and the US Supreme Court's 2023 decision in *Students for Fair Admissions v. Harvard*, which ruled that many race-based affirmative action programs are unconstitutional. This backward-looking scope confirms that historical practices may carry ongoing FCA exposure even where companies have since discontinued or modified their programs to comply with recent executive orders.

Key takeaways

- The IBM settlement confirms that DOJ is making good on its stated intention to deploy the FCA as an enforcement mechanism to target DEI programs it characterizes as discriminatory.

- DOJ is placing high priority on DEI FCA-related investigations. This settlement comes less than a year after the Initiative was announced, marking a clear effort to expedite investigations brought under the Initiative. Multiple senior DOJ officials also personally signed and made official statements supporting the IBM settlement.

- While the legal landscape remains unsettled, many companies may seek to resolve these investigations through early settlement rather than bearing the burden of costly and protracted litigation. This dynamic may delay the opportunity for courts to weigh in on the merits of the government's expanded FCA enforcement theory, leaving the contours of permissible DEI programming unclear.

- Federal contractors and recipients of government funding that maintain diversity-related programs should continue to carefully assess the parameters of those programs to ensure compliance with existing law, and should also consider whether the current administration would view past practices to be "illegal DEI" when assessing potential FCA enforcement risk.

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