

DOJ Begins Issuing Demand Letters to Contractors Under New Civil Rights Fraud Initiative

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The U.S. Department of Justice (the “DOJ”), Civil Division, has started issuing Civil Investigative Demands (“CIDs”) to federal contractors and grant recipients, seeking detailed information about their diversity, equity, and inclusion (“DEI”) practices. This move is part of the DOJ’s recently launched Civil Rights Fraud Initiative, which aims to enforce compliance with federal civil rights laws through the False Claims Act (“FCA”).

Background

As we [previously reported](#), the DOJ’s Civil Rights Fraud Initiative seeks to use the FCA “to investigate and, as appropriate, pursue claims against any recipient of federal funds that knowingly violates federal civil rights laws” – including Title IV, Title VI, and Title IX, of the Civil Rights Act of 1964 – and falsely certifies their compliance with such laws.

The Civil Rights Fraud Initiative builds on Executive Order 14173, “[Ending Illegal Discrimination and Restoring Merit-Based Opportunity](#)” Executive Order (the “Order”), which, among other things, requires federal agencies to include provisions in every federal contract or grant award requiring the contractor or grant recipient (1) to agree that compliance with federal anti-discrimination laws is material to the government’s decision to pay the contractor for purposes of the FCA; and (2) to certify that it does not operate any programs promoting DEI that violates any applicable federal anti-discrimination laws. The Administration has been issuing contract modifications incorporating these provisions which, as we discussed in a [prior post](#), create heightened enforcement risks for contractors.

More Details

A CID is an investigative tool that allows the DOJ to demand information and documents in the form of interrogatories, requests for production, and deposition testimony “relevant to a false claims law investigation” *before* the DOJ has formally brought an FCA action against the contractor or *as part of* an investigation brought by a whistleblower pursuant to the *qui tam* provisions of the FCA. Once an FCA action has been commenced in federal district court, however, the DOJ must use traditional litigation tools—*viz.* discovery.

Federal contractors and grant recipients that receive a CID relating to DEI are advised to promptly notify their legal counsel to prepare a response. In addition, in light of the potential FCA enforcement risks, all recipients of federal funds should conduct periodic privileged reviews of their DEI policies and practices to ensure compliance with applicable federal anti-discrimination laws.

We will continue to monitor and report on the DOJ’s enforcement efforts [here](#).

[View original.](#)

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