Proskauer

DOJ Resolves First DEI-Related False Claims Act Matter with IBM for $17 Million

Government Contractor Compliance & Regulatory Update on **April 15, 2026**

Quick Hit: On April 10, 2026, the Department of Justice ("DOJ") announced the first False Claims Act ("FCA") resolution secured under its Civil Rights Fraud Initiative. The settlement resolves allegations that International Business Machines Corporation ("IBM") violated the FCA "by failing to comply with anti-discrimination requirements in its federal contracts due to practices the United States contends discriminated against employees and applicants for employment because of race, color, national origin, or sex," and requires IBM to pay the federal government over $17 million. This is the first settlement of an FCA matter based on a contractor's diversity, equity, and inclusion ("DEI") initiatives.

Key Takeaways: Since President Trump took office in January 2025, we have been alerting government contractors of the Administration's efforts to target DEI in the private sector and its threat to use the FCA to stop such practices. The settlement with IBM demonstrates that the Administration is actively investigating government contractors' DEI practices, and this settlement appears to be just the tip of the iceberg.

Although details of the investigation are limited, there are interesting aspects that can be gleaned from the published settlement agreement (in addition to the monetary component).

- First, the practices the DOJ contends violated federal law include many that were prevalent in corporate America, at least prior to the Second Trump Administration. They include mentorship programs and the use of "diverse slates" and "diverse sourcing" in recruitment and hiring processes.
- Second, the practices investigated by the DOJ extend back to 2019, suggesting that contractors' recent efforts to align their practices with the current Administration's view on "legal" DEI may not insulate them fully from FCA investigations and liability.

- Third, there is no indication that IBM signed a contract including the DEI-related certifications introduced by President Trump in 2025 (discussed below). Rather, the Administration appears to take the view that existing Federal Acquisition Regulations and law are sufficient to render non-compliance with federal anti-discrimination laws a basis for FCA liability.

To the extent they were not already, contractors should be aware of this active area of enforcement and take steps to minimize the risk through privileged audits of their DEI and related practices. Indeed, the recently issued "Addressing DEI Discrimination by Federal Contractors" Executive Order adds additional risk for contractors in this space, as discussed in our prior post, and merits a fresh review of contractors' practices even if they have already conducted a review of their DEI and related initiatives.

More Detail: In January 2025, President Trump issued Executive Order 14173 ("EO 14173"), instructing agency heads to, among other things, include "in every contractor or grant award" the following provisions:

"(A) A term requiring the contractual counterparty or grant recipient to agree that its compliance in all respects with all applicable Federal anti-discrimination laws is material to the government's payment decisions for purposes of section 3729(b)(4) of title 31, United States Code; and

(B) A term requiring such counterparty or recipient to certify that it does not operate any programs promoting DEI that violate any applicable Federal anti-discrimination laws."

In so doing, the Trump Administration signaled to federal government contractors that it viewed DEI programs that violated federal anti-discrimination laws to be a basis for FCA liability.

Then, on May 19, 2025, then-Deputy Attorney General Todd Blanche issued a memorandum establishing the Department of Justice's "Civil Rights Fraud Initiative" (the "Initiative"). The May 19 memorandum explained that the Initiative "will utilize the False Claims Act to investigate and, as appropriate, pursue claims against any recipient of federal funds that knowingly violates federal civil rights laws," led by a team of attorneys from the DOJ's Civil Rights Division and Civil Division's Fraud Section who will "aggressively pursue this work together," while consulting with the DOJ's Criminal Division and other federal agencies.

The IBM settlement is the first public resolution of an investigation undertaken pursuant to the Initiative. As detailed in the settlement agreement reached with IBM, the DOJ contends that IBM knowingly submitted false claims and knowingly made false statements to the United States because it "certified compliance in its federal contracts with [anti-discrimination requirements as set forth in Title VII of the Civil Rights Act of 1964, as incorporated into its federal contracts, and the Federal Acquisition Regulation, including at FAR clause 52.222-26] while knowingly maintaining practices … that the United States contends discriminated against employees during employment and applicants for employment because of race, color, national origin, or sex, and failed to treat employees during employment without regard to race, color, national origin, or sex."

The practices at issue ("the Covered Conduct") included:

1. Modifications or adjustments to pay, bonus, or other compensation that caused employees to take race, color, national origin, or sex into account when making employment decisions, including a diversity modifier that tied bonus compensation to achieving demographic targets;
2. Taking race, color, national origin, or sex into account as part of decisions to hire, transfer, or promote through the use of "diverse interview slates," "diverse sourcing," and other related employment practices, including by altering interview eligibility criteria based on race, color, national origin, or sex;
3. Developing race and sex demographic goals for business units and taking race, color, national origin, or sex into account when making employment decisions to achieve progress towards those demographic goals; [and]
4. Offering certain training, partnerships, mentoring, leadership development programs, educational opportunities or resources, and/or similar opportunities only to certain employees, with eligibility, participation, access or admission limited on the basis of race, color, national origin, or sex.

The Covered Conduct occurred as far back as January 1, 2019. IBM denies that it engaged in the Covered Conduct.

As part of the settlement, IBM will pay $17,077,043, inclusive of civil penalties, in return for the DOJ releasing it from any civil claim or administrative monetary claim for the Covered Conduct under the FCA, the Program Fraud Civil Remedies Act, and common law theories of breach of contract, payment by mistake, unjust enrichment, or fraud. Approximately $8.2 million of this sum is restitution.

Notably, the DOJ, in reaching the settlement, credited IBM for cooperating with the investigation. The cooperation included: “disclosing facts early that were relevant to the government’s investigation and gathered during its independent investigation; providing information to assist in the determination of damages and penalties arising from the alleged conduct; and taking voluntary remedial measures, including the termination and/or modification of various programs, policies, or other activities described in the Covered Conduct.”

Contractors can expect more activity in this space. As Acting Attorney General Todd Blanche stated in announcing the settlement, the DOJ “launched the Civil Rights Fraud Initiative to root out this misconduct, hold offenders accountable, and end this practice for good.” In the same announcement, Associate Attorney General Stanley Woodward stated “[t]oday’s settlement proves this Department’s commitment to ensure companies are not using taxpayer funded work to further woke unconstitutional practices in American workplaces.”

In light of this development, Contractors should (re)review their DEI and related policies and practices and revise accordingly, with the help of counsel to ensure privilege.

We will continue to monitor developments in this space.

Related Professionals

- **Guy Brenner**
  Partner
- **Rachel Edelson**
  Associate