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CLIENT ALERT

Does IBM's Settlement Usher in a New Era of Corporate Exposure Under the False Claims Act for DEI Programs?

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Since the beginning of the second Trump administration, the United States Department of Justice (the "Department") has repeatedly expressed its intent to use the False Claims Act ("FCA") to target Diversity, Equity, and Inclusion ("DEI") practices at companies. Announced last May, the Department's Civil Rights Fraud Initiative (the "Initiative") was framed as a push to scrutinize and challenge DEI programs it determined were unlawfully discriminatory. On April 10, 2026, the Department announced a $17 million False Claims Act settlement with IBM—the first resolution under the Initiative.

This first and only settlement provides critical guidance in identifying the DEI employment practices that the Department views as actionable, and creates an opportunity for companies to consider how to address these issues. Federal contractors and grant recipients should also carefully assess their DEI-related policies, programs, and practices in light of this settlement and the growing risk of whistleblower suits.

Background

On May 19, 2025, the current Acting Attorney General Todd Blanche issued a memorandum establishing the Initiative. The Initiative directs attorneys from the Department's Civil Rights Division and Civil Division's Fraud Section to work in tandem to investigate and pursue claims under the FCA against any recipient of federal funds that knowingly violates federal civil rights law through DEI programs or practices that "assign benefits or burdens" on the basis of race, ethnicity, or national origin.

The Initiative operates against a broader regulatory backdrop that federal contractors have been navigating during the second Trump administration:

- **Executive Order 14173** — Revoked Executive Order 11246, which required government contractors to "take affirmative action to ensure" that job applicants and employees were considered and employed "without regard to their race, creed, color, or national origin."

  Executive Order 11246 had been expanded by subsequent Executive Orders over the years to include other classes, including sex and sexual orientation. President Trump's Executive Order 14173 revoked Executive Order 11246 and the subsequent amending Executive Orders requiring "affirmative action," and instead directed federal agencies to ensure that contractors certify compliance with federal anti-discrimination laws for protected classes under civil rights laws.

- **DOJ Guidance Memorandum** — Clarified that entities receiving federal funds must not discriminate on the basis of protected characteristics, regardless of whether a program is labeled as DEI.

- **Executive Order 14398** — Mandated that all federal contracts and subcontracts include a new clause prohibiting "racially discriminatory DEI activities," a term defined more expansively than in Executive Order 14173. The Executive Order further directed all Executive departments and agencies to acknowledge the financial materiality of anti-discrimination obligations.

  FCA lawsuits require establishing not only that the defendant knowingly submitted or caused to be submitted a false or fraudulent claim to the federal government, but also that such claim was material to the government's decision to pay. By directly embedding the FCA's materiality element into the contractual framework, the Executive Order seeks to meet that materiality requirement.

The IBM FCA Matter

a. The Alleged Violative Policies and Practices

The Department alleged that IBM falsely certified compliance with anti-discrimination requirements in its federal contracts while knowingly maintaining employment practices the government characterized as discriminatory on

the basis of race, color, national origin, and sex. The settlement agreement identifies four categories of "Covered Conduct" that are of interest to the Department:

- **Compensation adjustments tied to demographic targets.** IBM allegedly applied a "diversity modifier" that conditioned bonus and incentive pay on the achievement of specified race and sex demographic goals within business units.
- **Differential hiring procedures based on protected characteristics.** IBM allegedly maintained practices that altered hiring eligibility and interview panel composition depending on whether candidates were designated as "diverse."
- **Race- and sex-based demographic goals informing personnel decisions.** IBM allegedly set demographic targets for individual business units that functioned as inputs into promotion and staffing decisions.
- **Access-restricted development programs.** IBM allegedly offered mentorship, training, and leadership development programs with eligibility formally conditioned on race, sex, or national origin.

Critically, the Department also alleged that IBM allocated the costs of these programs to its federal contracts and sought reimbursement from the government, while simultaneously certifying compliance with anti-discrimination requirements. This cost-allocation allegation is what converted a Title VII employment dispute into an FCA investigation. The FCA, after all, only punishes false *claims* to the government.

b. The Settlement

IBM agreed to pay $17,077,043, apparently reflecting a multiplier on the underlying amount of $8,204,348 identified as restitution. It is unknown how the underlying damages amount was calculated. Based on publicly available data, however, IBM had nearly $9 billion in government contracts, both prime and subcontracts, during the relevant period (2019–2026).

IBM did not admit liability, and the settlement expressly stated that it was "neither an admission of liability by IBM nor a concession by the United States that its claims are not well founded." The government acknowledged that IBM took "significant steps" qualifying it for cooperation credit, including making early factual disclosures drawn from its internal investigation, assisting in calculating damages and penalties, and voluntarily terminating or modifying the programs at issue.

Final Thoughts

In practical terms, the settlement raises a concrete risk for companies to consider in making employment decisions. A previously theoretical FCA enforcement risk has become a reality, and federal contractors now have three clear data points:

- A clear set of practices that the Department objects to.
- A significant settlement figure that demonstrates the financial stakes.
- A rapidly evolving regulatory framework that will only intensify scrutiny of DEI-related programs.

In light of the settlement, companies should proactively assess whether any of their policies, programs, and practices bear similarities to the conduct specified in the IBM settlement. The Department's legal theories deploying the FCA in targeting DEI remain untested in court. It may be that the judiciary will pare back or entirely reject the Department's interpretation of the FCA's reach, assuming a targeted company litigates. Given the Department's commitment to this endeavor, however, companies should expect that the Department will be prepared to defend robustly the Initiative and any FCA cases brought. The IBM settlement also previews what lies in the future with respect to damages, especially given the Department's express commitment to use the FCA to investigate DEI-related practices and programs. In addition to damages, the Department will likely require civil penalties as part of future settlements, even in cases, like IBM's, where the defendant has cooperated and is receiving credit. That cooperation credit may also be more difficult to obtain for later targets of investigations, as the Department can now point to the IBM settlement as putting the public on notice of the Department's view of the law and expect companies to self-report.[1]

Now more than ever, companies need to ensure they have a compliance program that recognizes and adapts to the latest changes in enforcement. Companies should evaluate their potential exposure under the Initiative, assess their current policies in light of the factors identified in the IBM resolution, and consult with experienced counsel on how to achieve the best possible resolution of any FCA investigation concerning DEI practices. Willkie is available to advise on the full range of issues related to compliance with the FCA, as well as federal and state civil rights laws. As the landscape continues to evolve and we continue monitoring future litigation and resolutions, please reach out to the contacts below with any questions.

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[1] The Justice Manual § 4-4.112 contains Guidelines for Taking Disclosure, Cooperation and Remediation into Account in False Claims Act Matters, which specifically identifies "proactive, timely, and voluntary self-disclosure" as a critical factor in determining cooperation credit. However, those Guidelines also identify "other forms of cooperation" that companies can receive, such that companies may want to consider making any changes to policies and practices now but refraining from voluntarily self-disclosing. As we have frequently discussed in other alerts and in other contexts, the decision to self-disclose is highly fact-specific and requires careful evaluation and judgment. *See, e.g.*, One Size Fits All: DOJ's First Department-Wide Corporate Enforcement Policy (Mar. 13, 2026).

If you have any questions regarding this client alert, please contact the following attorneys or the Willkie attorney with whom you regularly work.

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