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DEI Scrutiny Update: DOJ Issues Guidance on Anti-Discrimination Obligations for Federal Funding Recipients

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Health care and other federal funding recipients now face escalating legal risk in their implementation of diversity, equity and inclusion (“DEI”) programs. The Executive Branch continues to reshape the enforcement of civil rights laws in this space, beginning with Executive Orders,¹ followed by directives to the Department of Justice (“DOJ”) and the Equal Employment Opportunity Commission (“EEOC”), and through targeted agency actions such as the joint letter² from the U.S. Departments of Education (“DOE”) and Health & Human Services (“HHS”) to Duke University (“Duke”) regarding race-conscious programming in a federally funded medical pathway program.

Now, the Attorney General has issued a new memorandum³ further clarifying the current administration’s position regarding what types of DEI activities violate federal anti-discrimination laws (“the July DOJ Memo” or the “Memo”). The Memo further recommends specific “Best Practices” for recipients of federal funding.

THE JULY DOJ MEMO

On July 29, 2025, U.S. Attorney General Pam Bondi issued the July DOJ Memo, titled “Guidance for Recipients of Federal Funding Regarding Unlawful Discrimination.” The July DOJ Memo builds on Executive Order 14173⁴ (issued in January 2025) and other DOJ/EEOC guidance from this administration, updating pre-existing interpretations of Title VII in the DEI context. The July DOJ Memo aims to clarify how federal civil rights laws apply to programs administered by federal funding recipients, as discussed further below. While not legally binding, this latest guidance signals an increasingly aggressive

enforcement posture from the current administration regarding DEI activities.

The July DOJ Memo applies broadly to recipients of federal financial assistance, including hospitals, health systems, universities, research institutions, local governments and nonprofit entities. Although the Memo is styled as non-binding guidance, it reflects DOJ's view that many DEI-related initiatives now risk violating Title VI, Title VII, Title IX, Section 1557 of the ACA and the Equal Protection Clause.

UNLAWFUL PRACTICES

The July DOJ Memo outlines four categories of DEI activities it considers presumptively unlawful if implemented by recipients of federal funds, including federal contractors, grantees or subawardees:

1. **Explicit Preferences Based on Protected Traits:** Programs that award benefits—such as scholarships, grants, leadership roles, internships or contracts—based on race, sex, religion or other protected characteristics, may be deemed unlawful even if framed as equity- or inclusion-oriented.
2. **Use of Proxies for Protected Status:** Programs using proxies like zip codes, “lived experience” or socioeconomic status to achieve race- or sex-based outcomes are not insulated from challenge. If the impact of such categorization mirrors prohibited classifications, the program may be found discriminatory. Additionally, any hiring, admissions, promotion or contracting process that explicitly or implicitly favors individuals based on a protected trait may be flagged as noncompliant with federal law.
3. **Segregated Spaces or Participation Tracks:** Affinity groups, identity-based lounges, mentorship cohorts or retreats that group or exclude participants based on race, sex or other protected characteristics may be viewed as unlawful segregation.

4. **Stereotyping or Hostile DEI Content:** DEI programming or training that identifies individuals based on race, sex, religion or similar characteristics, or reinforces stereotypes, or forces participants to affirm ideological positions or “confess” to personal biases or privileges may be deemed discriminatory or creating a hostile environment, even if intended to promote inclusion.

BEST PRACTICES: WHAT DOJ EXPECTS FROM FEDERALLY FUNDED ENTITIES

To mitigate risk and avoid enforcement, the July DOJ Memo urges recipients to adopt “Best Practices,” including:

- Use neutral eligibility criteria, such as financial need or academic merit, when determining access to programs or opportunities.
- Eliminate group-based quotas or targets and candidate slates, even aspirational ones.
- Screen DEI content and training for language that could be interpreted as stereotyping or being exclusionary.
- Add clear nondiscrimination terms to contracts, subawards and partnership agreements, and monitor compliance.
- Avoid euphemisms or branding that signals preferences or quotas, even where intent is well-meaning.

JOINT LETTER FROM DOE AND HHS TO DUKE UNIVERSITY

On July 28, 2025, DOE and HHS issued a joint letter (“Duke Letter”) to Duke’s President and Board of Trustees and the Dean of Duke’s School of Medicine, accusing Duke Health of engaging in racial preferences that may violate federal civil rights laws—specifically Title VI of the Civil Rights Act and Section 1557 of the Affordable Care Act.

The letter asserts that practices such as race-based recruitment, admissions, scholarships, mentoring and hiring at Duke

Health could be unlawful and jeopardize its eligibility for federal funding. The Duke Letter indicates DOE and HHS's collective desire to work collaboratively with Duke but demands immediate action. The Duke Letter requests the formation of a "Merit and Civil Rights Committee" with delegated authority from Duke's Board of Trustees, which will have six months to satisfy the Departments' list of requirements for maintaining the status quo, as follows:

- Undertake a comprehensive internal review of Duke Health's policies and practices to identify "illegal use of race preferences";
- Reform all policies and practices that "unlawfully take account of race or ethnicity to bestow benefits or advantages"; and
- Provide assurances that Duke Health's new policies will be "implemented faithfully going forward."

Finally, the Duke Letter indicates that if the above steps are not taken, or if attempted reform is insufficient, enforcement efforts may follow.

The Duke Letter is another indication that the current administration is taking a firm stance with respect to DEI initiatives, and it is serious about ensuring its priorities are implemented. Notably, the Letter requests that Duke form its committee and fulfill the required action items before either agency has completed (or even started) an investigation into Duke's alleged wrongdoing under the new scheme. This signals that the current administration may be treating allegations alone as confirmed wrongdoing, which may pose an additional layer of difficulty for federally funded entities. It is unlikely that the Duke Letter will be one-of-a-kind, and federally funded entities are well-advised to remain alert regarding the changing enforcement landscape.

PRACTICAL TAKEAWAYS

- Understand your organization's various federal funding streams in order to adequately prepare for potential government inquiry under the Civil Rights Fraud Initiative.⁵
- Consider conducting an attorney-client privileged internal review of your current DEI practices to ensure they are defensible under federal civil rights laws.
- Consider updating the terminology used to describe programs designed to ensure inclusivity in order to avoid implications of impermissible discrimination.
- Consider revising any public-facing company statements regarding DEI to ensure that such statements reflect lawful non-discrimination practices.
- Educate and remind managers, supervisors and employees that those who express concerns about potential civil rights violations under DEI policies are protected from retaliation in the same manner as any employee expressing concerns about potentially anti-discriminatory practices.
- Assess exposure and compliance posture now, before enforcement actions begin, and evaluate whether your counsel is sufficient to handle both DEI and FCA issues in this era of uncertainty.
- Continue to check for updates to litigation and agency action related to DEI.

Endnotes

1. 90 Fed. Reg. 8633 (Jan. 31, 2025).
2. <https://www.hhs.gov/sites/default/files/duke-health-joint-letter.pdf>.
3. U.S. Department of Justice, "Justice Department Releases Guidance for Recipients of Federal Funding Regarding Unlawful Discrimination" (July 30, 2025), available at <https://www.justice.gov/opa/pr/justice-department-releases-guidance-recipients-federal-funding-regarding-unlawful>.
4. 90 Fed. Reg. 8633 (Jan. 31, 2025).
5. Department of Justice Press Release, "Justice Department Establishes Civil Rights Fraud Initiative" (May 19, 2025), available at <https://www.justice.gov/opa/pr/justice-department-establishes-civil-rights-fraud-initiative>.

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