

Publications

Recipients of Federal Funds Directed to Align Diversity, Equity, and Inclusion Practices with Department of Justice Guidance

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On July 29, 2025, U.S. Attorney General Pamela Bondi released new guidance to federal agencies and all recipients of federal funds, “clarifying” how anti-discrimination laws will be enforced going forward. The memorandum emphasizes that civil rights protections apply even when programs are presented as diversity, equity, or inclusion initiatives. The Department of Justice (DOJ) noted that, while its guidance is “non-binding,” it presents “practical recommendations to minimize the risk of violations.” The DOJ made clear that it will scrutinize federally funded programs to ensure that activities, policies, and training do not exclude or disadvantage individuals based on race, sex, or other protected characteristics.

The DOJ guidance reaches a broad range of organizations, including private employers, universities, hospitals, contractors, and nonprofits that receive federal financial assistance (such as federal grants). The guidance also makes clear that a recipient of federal funds cannot rely on third parties with whom it contracts or partners to shield it from potential liability. The recipients must ensure that federal funds are not being used in any program, including any third-party programs that discriminate based on protected characteristics. The DOJ sets out several categories of practices it views as unlawful:

- Granting preferential treatment based on protected characteristics, such as race-based scholarships or programs, preferential hiring or promotion practices, and providing access to resources based on race or ethnicity.
- Using proxies for protected characteristics, such as “cultural competence” requirements, geographic or institutional targeting, and using “overcoming obstacles” narratives or “diversity statements” as a proxy for advantaging the protected characteristic in providing benefits.
- Segregation based on protected characteristics, such as race-based training sessions, segregating facilities or gender-based resources (except for single-sex restrooms, locker rooms, and lodging “based on biological sex”) and limiting program eligibility to members of

specific protected classes.

- Training programs that promote discrimination or hostile environments, such as those that stereotype or demean individuals or promote discrimination based on protected characteristics or that promote demographic-driven criteria that achieves discriminatory outcomes.

In practice, this means that longstanding diversity, equity, and inclusion measures such as programs reserved for protected classes (e.g. race-based or gender-specific scholarships), diversity-related hiring or promotion goals, diverse-slate requirements, and segregated networking groups or affinity groups create significant legal risk for those that receive federal funds. Engaging in such practices “could result in revocation of grant funding.”

The guidance took effect immediately upon its release and will guide DOJ enforcement actions going forward. While it does not purport to change existing law, it does signal heightened oversight and creates a greater likelihood of investigations and enforcement actions. Because recipients of federal funds regularly certify compliance with nondiscrimination obligations, ignoring the DOJ’s position may expose organizations to claims under the False Claims Act and jeopardize their funding.

In the memorandum, the DOJ outlined “best practices” to help recipients of federal funds “avoid legal pitfalls” and conform to its present view of federal antidiscrimination laws. Recipients are encouraged to ensure that all programs and resources are open to qualified individuals without exclusion based on protected characteristics, with limited exceptions for privacy, safety, or athletics. Selection processes should rely on measurable skills and qualifications directly tied to performance, not on demographic considerations or proxies that may serve as stand-ins for race, sex, or other traits. The DOJ also advises eliminating quotas or demographic benchmarks, documenting legitimate and consistently applied rationales for decisions, and reviewing neutral criteria to confirm they are not being used to achieve prohibited outcomes. Additionally, training programs should be inclusive, non-coercive, and accessible to all participants. Nondiscrimination clauses should be included in contracts with third parties, and then the third party should be monitored in how they use the federal funds. Recipients of federal funds should also create “clear anti-retaliation policies” that provide safe, confidential, and accessible channels for reporting concerns about “unlawful practices.”

Recipients of federal funds should review their programs, policies, and relationships with third parties in light of the DOJ guidance to “mitigate the legal, financial, and reputational risks associated with unlawful DEI practices.”