



# Navigating the DOJ's Civil Rights Fraud Initiative

## Executive Briefing Overview

On June 26, Trendline Strategies hosted a virtual executive briefing on navigating the U.S. Department of Justice's newly launched Civil Rights Fraud Initiative which seeks to prioritize use of the False Claims Act as an enforcement tool to encourage the private sector to end "illegal DEI discrimination" consistent with President Trump's [Executive Order 14173](#), Ending Illegal Discrimination and Restoring Merit-Based Opportunity.

Speakers included:

- **Edward Arnold**, Partner, Government Contracts and Co-Chair of the False Claims Act Group at Seyfarth Shaw
- **Tom Perez**, Partner at Mayer Brown; Former Secretary of the U.S. Department of Labor and Assistant Attorney General for Civil Rights
- **Debo Adegbile**, Partner and Chair of the Anti-Discrimination Practice at WilmerHale
- **Jonay Holkins**, Principal, Trendline Strategies

The discussion provided a primer on the False Claims Act and explored the Civil Rights Fraud Initiative's potential implications for private sector diversity, equity, and inclusion efforts. Legal experts provided critical insights into how federal action may shape risk management and strategic decision-making for companies. Key takeaways from the briefing are outlined below.

### Top Four Takeaways

#### 1. The Executive Order Does Not Supersede Anti-Discrimination Laws

Although the Administration seeks to leverage the False Claims Act as a tool to compel compliance with Executive Order 14173's goal of ending "illegal discrimination and preferences, including DEI," there is no definition of these terms as referenced in the order. When assessing risks associated with your company's policies, practices and programs, the False Claims Act and existing anti-discrimination laws (e.g. Title VI, Title VII, and 42 U.S.C. § 1981) serve as the best guidepost for what is considered lawful conduct.

## **2. The Civil Rights Fraud Initiative Introduces Uncertainty, but Existing Law Still Guides Risk Assessments**

EO 14173 directs agencies to include contract language making compliance with federal anti-discrimination laws a condition of payment, and requires contractors and grantees to certify they do not promote DEI programs that violate those laws. This, paired with DOJ's Civil Rights Fraud Initiative, signals a significant shift toward using the False Claims Act (FCA) to enforce anti-discrimination laws.

FCA liability arises when an individual or entity knowingly submits a false claim for payment to the federal government, and the falsehood is material to the government's decision to pay. While this new approach may raise questions about materiality and knowledge, the FCA does not require predicting future legal changes—only reasonable, good-faith compliance with current law and regulations.

Still, the Trump Administration may pursue high-profile enforcement actions to test legal boundaries, creating risk for contractors and grantees. As a starting point to assess exposure, entities should ask:

- How likely are you to draw federal scrutiny?
- Can you defend your DEI policies and practices if challenged?
- What are the stakes if enforcement action is successful?

## **3. Avoid Overcorrection & Develop a Long-Term Strategy Rooted in the Business Case**

While there is pressure to scale back diversity and inclusion practices and initiatives, overcorrecting in one area can expose a company to other risks. Companies should review their efforts and balance minimizing legal risks with managing financial and reputational risks. Continue to document the progress of diversity and inclusion programs and systems you have in place that support opportunities for all. DEI programs aligned with civil rights laws can and should be maintained as part of long-term business strategy.

## **4. Proactively Conduct Internal Reviews and Document Your Efforts**

Regularly audit your company's policies and DEI programs against current anti-discrimination laws to demonstrate due diligence and reduce FCA risk. Engage legal counsel early, involve cross-functional teams, and document each step of your process.

Consider starting with a privileged review (i.e. an internal review or investigation conducted under the protection of attorney-client privilege) of diversity, equity and inclusion related policies, practices, and programs to preserve confidentiality while identifying legal risks. Non-privileged reviews may also strengthen your position if challenged. A well-documented, transparent compliance process is one of the best defenses against enforcement actions.