Defending Equal Opportunity Programs Against Threats of False Claims Act Liability: What You Need to Know

In a clear attempt to pressure private companies, schools, nonprofits, and other federal grantees and contractors to end their diversity, equity, inclusion, and accessibility programs, the Trump administration has announced plans to investigate and pursue fraud claims under the False Claims Act (FCA), a law first created in 1863 to tackle fraud in government contracts. Anti-civil rights groups and private individuals may try to bring similar claims. They face an uphill battle in court. **Here is what you need to know.**[1]

The Trump administration is misusing the FCA, a federal law designed to target fraud, to advance its radical and divisive policy agenda. The FCA permits both the federal government and private parties to sue individuals or organizations that knowingly: 1) submit, or cause to submit, false claims to the federal government, or 2) make or use a false record or statement material to a false claim, among other things.[2] It was enacted to address fraud by defense contractors during the American Civil War.[3] If a court finds a funding recipient violated the FCA, the recipient may be liable for up to three times the amount of damages sustained by the government because of the fraud and mandatory monetary penalties imposed by the Act.[4] FCA charges have usually been brought against individuals and organizations that use fraudulent cost or pricing information or charge the federal government for services they didn't perform, such as healthcare fraud.[5]

The Trump administration now intends to weaponize FCA enforcement, contending that federal contractors and grantees that certify their compliance with federal civil rights laws may be liable under the FCA because they operate diversity, equity, and inclusion programs.[6] But, far from violating civil rights laws, the pursuit of diversity, equity, inclusion, and accessibility is precisely what those laws were designed to accomplish. The administration's use of the FCA to target such programs is not about enforcing civil rights laws, it is an attempt to chill activity it disfavors.

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[1] This document is not intended to, and should not be understood to, provide legal advice. Specific programs, initiatives, or questions should be reviewed with counsel.
[2] 31 U.S.C. 3729(a).
[3] U.S. Dep't of Justice, Civil Division, The False Claims Act, https://www.justice.gov/civil/false-claims-act (last visited Jan. 13, 2026).
[4] 31 U.S.C. § 3729(a)(1).
[5] Jonathan Porter, Kip Randall, & Jody Rudman, Year-End False Claims Act Roundup: Key Cases, Enforcement Trends, and What Businesses Should Do Now, JD Supra (Jan. 5, 2026), https://www.jdsupra.com/legalnews/year-end-false-claims-act-roundup-key-6634261/. In some instances, the FCA has been used to advance the proper and intended goals of civil rights laws. *See U.S. ex rel. Anti-Discrimination Ctr. of Metro New York, Inc. v. Westchester Cnty., N.Y.*, 668 F. Supp. 2d 548, 562–63 (S.D.N.Y. 2009) (finding that Westchester County, a recipient of U.S. Housing and Urban Development funding, made false claims for the purposes of the FCA, when it failed to keep records on and analyze race-based impediments to fair housing as required by federal regulations and guidance consistent with the Fair Housing Act and case law).
[6] Mem. from Deputy Attorney General Todd Blanche to Office of the Associate Attorney General, et al., RE: Civil Rights Fraud Initiative (May 19, 2025), https://www.justice.gov/dag/media/1400826/dl?inline=&utm_medium=email&utm_source=govdelivery.

The Trump administration's radical and inaccurate views of civil rights law do not change the law and do not control how courts decide False Claims Act cases. As we have explained elsewhere, many diversity, equity, inclusion, and accessibility programs not only comply with, but advance federal civil rights laws. Just because the administration has targeted these programs does not mean they are unlawful. The Trump administration cannot rewrite federal laws. The administration's prior attempts to force organizations to certify they will follow false interpretations of federal civil rights laws have been blocked by courts.[7] In fact, when similar requirements have faced scrutiny in court, the Trump administration has recognized that it can only require entities to certify compliance with existing interpretations of these laws.[8]

The Trump administration faces an uphill battle proving this type of False Claims Act charge in court. The government will face significant challenges in court if it bases FCA claims on unsupported interpretations of civil rights laws. Liability under the FCA is based on what recipients of federal funding thought and believed about actual legal requirements when they made the relevant statement—not on inaccurate positions held by the government. To succeed on a FCA claim, the government must prove the recipient of federal funds knew its certification was false or recklessly disregarded the truth or falsity of the certification. With respect to the government's targeting of DEIA programs, it would have to prove not only that the funding recipient's diversity, equity, inclusion, and accessibility programs violate federal civil rights laws, but also that the funding recipient knew the programs did so when it certified its compliance with federal civil rights laws.[9] This knowledge requirement is a difficult standard to meet and is based on the prevailing legal standard, not the Trump administration's interpretation of the law.

Courts are unlikely to find FCA liability if doing so would require adopting an interpretation of the law contrary to what courts have already said about the Constitution and federal anti-discrimination laws.[10] Still, it is always a good idea for recipients of federal funds to regularly review their policies and practices to ensure they comply with federal laws.

The bottom line—courts are unlikely to find that federal contractors and grantees violate the False Claims Act by operating lawful diversity, equity, inclusions, and accessibility programs.

Updated as of January 21, 2026

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[7] *Am. Fed. of Teachers v. U.S. Dep't of Educ.,* No. 1:25-cv-00628 (D. Md. Aug. 14, 2025); *Nat'l Educ. Assoc. v. U.S. Dep't of Educ.*, No. 1:25-cv-00091 (D.N.H. Apr. 24, 2025); *NAACP v. U.S. Dep't of Educ.*, No. 1:25-cv-01120 (D.D.C. Apr. 24, 2025).

[8] *See, e.g.*, Defs.' Mem. in Supp. of Mot. to Dismiss at 4, 21, ECF No. 70-1, *Nat'l Urb. League v. Trump*, 783 F. Supp 3.d 61 (D.D.C. 2025).

[9] 31 U.S.C. § 3729(a)(1).

[10] Moreover, government interpretations of civil rights laws in policy statements, enforcement guidelines, and guidance letters lack the force of law. *Christensen v. Harris County,* 529 U.S. 576, 587 (2000). Such interpretations are only instructive with respect to a recipient of federal funding's obligations under the law if they are consistent with case law or statutes. *Id.* Federal funding recipients are only liable for false statements certifying compliance if those guidance documents reflect an accurate interpretation of federal law. *See U.S. ex rel. Anti-Discrimination Ctr. of Metro New York,* 668 F. Supp. 2d at 563.