Office of the Attorney General
Washington, D. C. 20530

July 29, 2025

MEMORANDUM FOR ALL FEDERAL AGENCIES

FROM: THE ATTORNEY GENERAL

SUBJECT: GUIDANCE FOR RECIPIENTS OF FEDERAL FUNDING REGARDING UNLAWFUL DISCRIMINATION

I. INTRODUCTION

One of our Nation's bedrock principles is that all Americans must be treated equally. Not only is discrimination based on protected characteristics illegal under federal law, but it is also dangerous, demeaning, and immoral. Yet in recent years, the federal government has turned a blind eye toward, or even encouraged, various discriminatory practices, seemingly because of their purportedly benign labels, objectives, or intentions. No longer. Going forward, the federal government will not stand by while recipients of federal funds engage in discrimination.

This guidance clarifies the application of federal antidiscrimination laws to programs or initiatives that may involve discriminatory practices, including those labeled as Diversity, Equity, and Inclusion ("DEI") programs.[1] Entities receiving federal funds, like all other entities subject to federal antidiscrimination laws, must ensure that their programs and activities comply with federal law and do not discriminate on the basis of race, color, national origin, sex, religion, or other protected characteristics—no matter the program's labels, objectives, or intentions. In furtherance of that requirement, this guidance identifies "Best Practices" as non-binding suggestions to help entities comply with federal antidiscrimination laws and avoid legal pitfalls; these are not mandatory requirements but rather practical recommendations to minimize the risk of violations.

Entities that receive federal financial assistance or that are otherwise subject to federal anti-discrimination laws, including educational institutions, state and local governments, and public and private employers, should review this guidance carefully to ensure all programs comply with their legal obligations.

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[1] DEI programs go by other names as well, such as Diversity, Equity, Inclusion, and Accessibility ("DEIA") and Diversity, Equity, Inclusion, and Belonging ("DEIB").

II. EXECUTIVE SUMMARY

This guidance emphasizes the significant legal risks of initiatives that involve discrimination based on protected characteristics and provides non-binding best practices to help entities avoid the risk of violations. Key points include:

- **Statutory nondiscrimination requirements:** Federal law prohibits discrimination based on protected characteristics like race, sex, color, national origin, or religion.

- **Legal pitfalls of DEI Programs:** The use of terms such as "DEI," "Equity," or other euphemistic terms does not excuse unlawful discrimination or absolve parties from scrutiny regarding potential violations.

- **Prohibition on Protected Characteristics as Criteria:** Using race, sex, or other protected characteristics for employment, program participation, resource allocation, or other similar activities, opportunities, or benefits, is unlawful, except in rare cases where such discrimination satisfies the relevant level of judicial scrutiny.

- **Importance of Sex-Separated Intimate Spaces and Athletic Competitions:** Compelling employees to share intimate spaces with the opposite sex or allowing men to compete in women's athletic competitions would typically be unlawful.

- **Unlawful Proxy Discrimination:** Facially neutral criteria (e.g., "cultural competence," "lived experience," geographic targeting) that function as proxies for protected characteristics violate federal law if designed or applied with the intention of advantaging or disadvantaging individuals based on protected characteristics.

- **Scrutiny of Third-Party Funding:** Recipients of federal funds should ensure federal funds do not support third-party programs that discriminate.

- **Protection Against Retaliation:** Individuals who object to or refuse to participate in discriminatory programs, trainings, or policies are protected from adverse actions like termination or exclusion based on that individual's opposition to those practices.[2]

III. KEY FEDERAL ANTIDISCRIMINATION PROVISIONS AND LAW

Federal antidiscrimination laws prohibit discrimination on the basis of protected characteristics, including race, color, religion, sex, and national origin. The U.S. Supreme Court has consistently held that policies or practices based upon protected characteristics are subject to

[2] Unlawful retaliation occurs when a federally funded entity takes adverse actions against employees, participants, or beneficiaries because they engage in protected activities related to opposing DEI practices they reasonably believe violate federal antidiscrimination laws.

rigorous judicial scrutiny. Race-based classifications are subject to strict scrutiny, requiring a compelling governmental interest and narrowly tailored means to achieve that interest.[3] Sex-based classifications are subject to heightened scrutiny, requiring an exceedingly persuasive justification and substantial relation to an important governmental objective.[4] Discrimination based on other protected characteristics, such as religion, is also evaluated under analogous standards.[5] Entities receiving federal funds must comply with applicable civil rights laws, including:

- **Title VI of the Civil Rights Act of 1964:** Prohibits discrimination based on race, color, or national origin in any program or activity receiving federal financial assistance. This includes most educational institutions, healthcare providers, and state and local government agencies.

- **Title VII of the Civil Rights Act of 1964:** Prohibits employment discrimination based on, or motivated by, race, color, religion, sex, or national origin, in any terms, conditions, or privileges of employment, including hiring, promotion, demotion, termination, compensation, job transfers, training, or access to employment privileges and benefits.

- **Title IX of the Education Amendments of 1972:** Prohibits discrimination based on sex in education programs or activities receiving federal financial assistance. Title IX protections extend beyond athletics and include addressing sexual harassment, sex-based harassment, admissions policies, and equal access to resources and programs.

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[3] *See, e.g.*, *Students for Fair Admissions, Inc. v. Harvard*, 600 U.S. 181, 214 (2023) (holding racial classifications by public institutions are subject to strict scrutiny and racial classifications by private institutions can serve as basis for revoking funding under Title VI); *Ricci v. DeStefano*, 557 U.S. 557, 579 (2009) ("[E]xpress, race-based decision-making violates Title VII's command that employers cannot take adverse employment actions because of an individual's race."); *see also Vitolo v. Guzman*, 999 F.3d 353, 361 (6th Cir. 2021) (holding grant program with race and sex preferences is unlawful under Equal Protection Clause).

[4] *See, e.g.*, *United States v. Virginia*, 518 U.S. 515, 531 (1996).

[5] *See, e.g.*, *Espinoza v. Montana Dep't of Revenue*, 591 U.S. 464, 479 (2020) ("The Free Exercise Clause, which applies to the States under the Fourteenth Amendment, protects religious observers against unequal treatment and against laws that impose special disabilities on the basis of religious status . . . . [S]trict scrutiny applies . . . because Montana's no-aid provision discriminates based on religious status"); *Shapiro v. Thompson*, 394 U.S. 618, 631 (1969) (holding discriminating against individual for exercising fundamental constitutional rights is subject to heightened scrutiny), *overruled on other grounds by Edelman v. Jordan*, 415 U.S. 651 (1974); *see also Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 540 (1993) (relying on Equal Protection principles in holding intentional discrimination against exercise of religion is subject to strict scrutiny).

- **Equal Protection Clause of the Fourteenth Amendment:** Prohibits States from denying any person the equal protection of the laws, relevant in the context of discrimination claims involving state or local government actions.

IV. UNLAWFUL DISCRIMINATORY POLICIES AND PRACTICES

The following is a non-exhaustive list of unlawful practices that could result in revocation of grant funding. Federal funding recipients may also be liable for discrimination if they knowingly fund the unlawful practices of contractors, grantees, and other third parties.

A. Granting Preferential Treatment Based on Protected Characteristics

1. What Constitutes Unlawful Preferential Treatment?

Preferential treatment occurs when a federally funded entity provides opportunities, benefits, or advantages to individuals or groups based on protected characteristics in a way that disadvantages other qualified persons, including such practices portrayed as "preferential" to certain groups. Such practices violate federal law unless they meet very narrow exceptions.

2. Examples of Unlawful Practices

Race-Based Scholarships or Programs: A university's DEI program establishes a scholarship fund exclusively for students of a specific racial group (e.g., "Black Student Excellence Scholarship") and excludes otherwise qualified applicants of other races, even if they meet academic or financial need criteria. This extends to any race-exclusive opportunities, such as internships, mentorship programs, or leadership initiatives that reserve spots for specific racial groups, regardless of intent to promote diversity. Such race-exclusive programs violate federal civil rights law by discriminating against individuals based solely on their race or treating people differently based on a protected characteristic without meeting the strict legal standards required for race-conscious programs.

Preferential Hiring or Promotion Practices: A federally funded entity's DEI policy prioritizes candidates from "underrepresented groups" for admission, hiring, or promotion, bypassing qualified candidates who do not belong to those groups, where the preferred "underrepresented groups" are determined on the basis of a protected characteristic like race.

Access to Facilities or Resources Based on Race or Ethnicity: A university's DEI initiative designates a "safe space" or lounge exclusively for students of a specific racial or ethnic group.

B. Prohibited Use of Proxies for Protected Characteristics

1. What Constitutes Unlawful Proxies?

Unlawful proxies occur when a federally funded entity intentionally uses ostensibly neutral criteria that function as substitutes for explicit consideration of race, sex, or other protected characteristics. While these criteria may appear facially neutral, they become legally problematic under any of the following circumstances:

- They are selected because they correlate with, replicate, or are used as substitutes for protected characteristics.
- They are implemented with the intent to advantage or disadvantage individuals based on protected characteristics.

2. Examples of Potentially Unlawful Proxies

"Cultural Competence" Requirements: A federally funded university requires job applicants to demonstrate "cultural competence," "lived experience," or "cross-cultural skills" in ways that effectively evaluate candidates' racial or ethnic backgrounds rather than objective qualifications. This includes selection criteria that advantage candidates who have experiences the employer associates with certain racial groups. For instance, requiring faculty candidates to describe how their "cultural background informs their teaching" may function as a proxy if used to evaluate candidates based on race or ethnicity.

Geographic or Institutional Targeting: A federally funded organization implements recruitment strategies targeting specific geographic areas, institutions, or organizations chosen primarily because of their racial or ethnic composition rather than other legitimate factors.

"Overcoming Obstacles" Narratives or "Diversity Statements": A federally funded program requires applicants to describe "obstacles they have overcome" or submit a "diversity statement" in a manner that advantages those who discuss experiences intrinsically tied to protected characteristics, using the narrative as a proxy for advantaging that protected characteristic in providing benefits.

C. Segregation Based on Protected Characteristics

1. What Constitutes Unlawful Segregation?

Segregation based on protected characteristics occurs when a federally funded entity organizes programs, activities, or resources—such as training sessions—in a way that separates or restricts access based on race, sex, or other protected characteristics. Such practices generally violate federal law by creating unequal treatment or reinforcing stereotypes, regardless of the stated goal (e.g., promoting inclusion or addressing historical inequities). Exceptions are narrow

and include only cases where federal law expressly permits race-based remedies for specific, documented acts of past discrimination by the institution itself, or in specialized contexts such as correctional facilities where courts have recognized compelling institutional interests.

While compelled segregation is generally impermissible, failing to maintain sex-separated athletic competitions and intimate spaces can also violate federal law. Federally funded institutions that allow males, including those self-identifying as "women," to access single-sex spaces designed for females—such as bathrooms, showers, locker rooms, or dormitories—undermine the privacy, safety, and equal opportunity of women and girls. Likewise, permitting males to compete in women's athletic events almost invariably denies women equal opportunity by eroding competitive fairness. These policies risk creating a hostile environment under Title VII, particularly where they compromise women's privacy, safety, or professional standing, and can violate Title IX by denying women access to the full scope of sex-based protections in education. To ensure compliance with federal law and to safeguard the rights of women and girls, organizations should affirm sex-based boundaries rooted in biological differences.

2. Examples of Unlawful Practices

Race-Based Training Sessions: A federally funded university hosts a DEI training program that requires participants to separate into race-based groups (e.g., "Black Faculty Caucus" or "White Ally Group") for discussions, prohibiting individuals of other races from participating in specific sessions. In contrast, a "Faculty Academic Support Network" open to all faculty interested in promoting student success avoids reliance on protected characteristics and complies with federal law.

Segregation in Facilities or Resources: A college receiving federal funds designates a "BIPOC-only study lounge," facially discouraging access by students of other races. Even if access is technically open to all, the identity-based focus creates a perception of segregation and may foster a hostile environment. This extends to any resource allocation—such as study spaces, computer labs, or event venues—that segregates access based on protected characteristics, even if intended to create "safe spaces." This does not apply to facilities that are single-sex based on biological sex to protect privacy or safety, such as restrooms, showers, locker rooms, or lodging.

Implicit Segregation Through Program Eligibility: A federally funded community organization hosts a DEI-focused workshop series that requires participants to identify with a specific racial or ethnic group (e.g., "for underrepresented minorities only") or mandates sex-specific eligibility, effectively excluding others who meet objective program criteria. Use of Protected Characteristics in Candidate Selection

3. What Constitutes Unlawful Use of Protected Characteristics?

Unlawful use of protected characteristics occurs when a federally funded entity or program considers race, sex, or any other protected trait as a basis for selecting candidates for employment

(e.g., hiring, promotions), contracts (e.g., vendor agreements), or program participation (e.g., internships, admissions, scholarships, training). This includes policies that explicitly mandate representation of specific groups in candidate pools or implicitly prioritize protected characteristics through selection criteria, such as "diverse slate" requirements, diversity decision-making panels, or diversity-focused evaluations. It also includes requirements that contracting entities utilize a specific level of working hours from individuals of certain protected characteristics to complete the contract. Such practices violate federal law by creating unequal treatment or disadvantaging otherwise qualified candidates, regardless of any intent to advance diversity goals.

4. Examples of Unlawful Practices

Race-Based "Diverse Slate" Policies in Hiring: A federally funded research institute adopts a policy requiring that all interview slates for faculty positions include a minimum number of candidates from specific racial groups (e.g., at least two "underrepresented minority" candidates), rejecting otherwise qualified candidates who do not meet this racial criterion. This extends to any policy that sets racial benchmarks or mandates demographic representation in candidate pools, such as requiring a certain percentage of finalists to be from "diverse" backgrounds.

Sex-Based Selection for Contracts: A federally funded state agency implements a DEI policy that prioritizes awarding contracts to women-owned businesses, automatically advancing female vendors or minority-owned businesses over equally or more qualified businesses without preferred group status. This includes any contract selection process that uses sex or race as a tiebreaker or primary criterion, such as policies favoring "minority- or women-owned" businesses without satisfying the appropriate level of judicial scrutiny.

Race- or Sex-Based Program Participation: A federally funded university's internship program requires that 50% of selected participants be from "underrepresented racial groups" or female students, rejecting equally or more qualified applicants who do not meet these demographic criteria. This extends to any program—such as scholarships, fellowships, or leadership initiatives—that uses race, sex, or any other protected characteristic as a selection criterion, even if framed as addressing underrepresentation.

D. Training Programs That Promote Discrimination or Hostile Environments

1. What Constitutes Unlawful DEI Training Programs?

Unlawful DEI training programs are those that—through their content, structure, or implementation—stereotype, exclude, or disadvantage individuals based on protected characteristics or create a hostile environment. This includes training that:

- Excludes or penalizes individuals based on protected characteristics.

- Creates an objectively hostile environment through severe or pervasive use of presentations, videos, and other workplace training materials that single out, demean, or stereotype individuals based on protected characteristics.

2. Examples of Unlawful Practices

Trainings That Promote Discrimination Based on Protected Characteristics: A federally funded school district requires teachers to complete a DEI training that includes statements stereotyping individuals based on protected characteristics—such as "all white people are inherently privileged," "toxic masculinity," etc. Such trainings may violate Title VI or Title VII if they create a hostile environment or impose penalties for dissent in ways that result in discriminatory treatment.[6]

E. Recommendations on Best Practices

Ensure Inclusive Access: All workplace programs, activities, and resources should be open to all qualified individuals, regardless of race, sex, or other protected characteristics. Avoid organizing groups or sessions that exclude participants based on protected traits. Some sex separation is necessary where biological differences implicate privacy, safety, or athletic opportunity.

Focus on Skills and Qualifications: Base selection decisions on specific, measurable skills and qualifications directly related to job performance or program participation. For example, rather than asking about "cultural competence," assess specific skills such as language proficiency or relevant educational credentials. Criteria like socioeconomic status, first-generation status, or geographic diversity must not be used if selected to prioritize individuals based on racial, sex-based, or other protected characteristics.

Prohibit Demographic-Driven Criteria: Discontinue any program or policy designed to achieve discriminatory outcomes, even those using facially neutral means. Intent to influence demographic representation risks violating federal law. For example, a scholarship program must not target "underserved geographic areas" or "first-generation students" if the criteria are chosen to increase participation by specific racial or sex-based groups. Instead, use universally applicable criteria, such as academic merit or financial hardship, applied without regard to protected characteristics or demographic goals.

Document Legitimate Rationales: If using criteria in hiring, promotions, or selecting contracts that might correlate with protected characteristics, document clear, legitimate rationales unrelated to race, sex, or other protected characteristics. Ensure these rationales are consistently applied and are demonstrably related to legitimate, nondiscriminatory institutional objectives.

Scrutinize Neutral Criteria for Proxy Effects: Before implementing facially neutral criteria, rigorously evaluate and document whether they are proxies for race, sex, or other protected

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[6] Federal law allows for workplace harassment trainings that are focused on preventing unlawful workplace discrimination and that do not single out particular groups as inherently racist or sexist.

characteristics. For instance, a program targeting "low-income students" must be applied uniformly without targeting areas or populations to achieve racial or sex-based outcomes.

Eliminate Diversity Quotas: Focus solely on nondiscriminatory performance metrics, such as program participation rates or academic outcomes, without reference to race, sex, or other protected traits. And discontinue policies that mandate representation of specific racial, sex-based, or other protected groups in candidate pools, hiring panels, or final selections. For example, replace a policy requiring "at least one minority candidate per slate" with a process that evaluates all applicants based on merit.

Avoid Exclusionary Training Programs: Ensure trainings are open to all qualified participants, regardless of protected characteristics. Avoid segregating participants into groups based on race, sex, or other protected characteristics. Trainings should not require participants to affirm specific ideological positions or "confess" to personal biases or privileges based on a protected characteristic.

Include Nondiscrimination Clauses in Contracts to Third Parties and Monitor Compliance: Incorporate explicit nondiscrimination clauses in grant agreements, contracts, or partnership agreements, requiring third parties to comply with federal law, and specify that federal funds cannot be used for programs that discriminate based on protected characteristics. Monitor third parties that receive federal funds to ensure ongoing compliance, including reviewing program materials, participant feedback, and outcomes to identify potential discriminatory practices. Terminate funding for noncompliant programs.

Establish Clear Anti-Retaliation Procedures and Create Safe Reporting Mechanisms: Implement and communicate policies that prohibit retaliation against individuals who engage in protected activities, such as raising concerns, filing complaints, or refusing to participate in potentially discriminatory programs. Include these policies in employee handbooks, student codes of conduct, and program guidelines. Provide confidential, accessible channels for individuals to report concerns about unlawful practices.

V. CONCLUSION

Entities are urged to review all programs, policies, and partnerships to ensure compliance with federal law, and discontinue any practices that discriminate on the basis of a protected status. The recommended best practices provided in this guidance are non-binding suggestions to assist entities in avoiding legal pitfalls and upholding equal opportunity for all. By prioritizing nondiscrimination, entities can mitigate the legal, financial, and reputational risks associated with unlawful DEI practices and fulfill their civil rights obligations.

OFFICE OF ATTORNEY GENERAL
JAMES UTHMEIER

POLICY MEMORANDUM

The State of Florida, as a matter of policy and law, is committed to ending unlawful discrimination and bias. As our state officials have long made clear: Diversity, Equity, and Inclusion (DEI) and Environmental Social Governance (ESG) standards are transparently designed to intentionally discriminate on prohibited bases under the cover of anodyne phrasing. The Office of Attorney General—like other state government counterparts—will not allow Floridians' hard-earned tax dollars to be spent on these unlawful, discriminatory programs.

Many of our nation's largest and most profitable law firms have played a substantial role in trafficking DEI, ESG, and other illegal and discriminatory initiatives into Corporate America. One notable example is former U.S. Attorney General Eric Holder, who has burnished a reputation and lucrative practice devoted to promoting these illegal, inappropriate corporate policies. Many American law firms proudly parade their DEI/ESG programs and commitments. Indeed, this overt celebration of discriminatory practices has recently spurred an investigation into several firms by the U.S. Equal Employment Opportunity Commission.

Like the EEOC, I am deeply troubled that these discriminatory practices have been embraced and amplified by many of our nation's law firms. If we are truly committed to the rule of law, then we must be truly committed to equal justice under law. DEI and ESG practices flout those bedrock principles.

As Florida's Chief Legal Officer, I am committed to ending discriminatory DEI and ESG policies—under those monikers or others—and ensuring that resources entrusted to us by the taxpayers do not flow to vendors, programs, policies, and initiatives that misalign with the laws and policies of Florida.

This office engages outside counsel from time to time, and we approve outside counsel engagements from other cabinet and state agencies, as required by Fla. Stat. §§ 16.015 and 287.059. OAG receives and reviews requests to engage private attorneys

pursuant to Rule 2-37.010, Fla. Admin. Code. OAG vets each request, and I approve or deny each request as authorized by Fla. Stat. § 287.059(3).

Beginning immediately, the Florida Attorney General's Office will no longer engage or approve the engagement of private law firms who have or continue to engage in illegal and inappropriate discrimination and bias. Racial discrimination, in any form, is wrong and illegal. Florida taxpayer resources should not redound to the benefit of law firms who pretend otherwise.

DEI

Law firms that have demonstrated a history of racially discriminating against their own attorneys, staff, and job applicants will no longer be considered eligible for state work, absent a compelling demonstration of changed behavior and a rejection of discriminatory principles. The following is a list of inexhaustive law firm practices/programs/affiliations that will give rise to a disqualifying presumption:

- **Mansfield Certification** – Historically, Mansfield Certification, a project of Diversity Lab, required that 30% of candidates for law firm leadership roles and advancement opportunities (and 50% of candidates for in-house legal departments at companies) be members of "underrepresented groups," defined as women lawyers, "racial and ethnic lawyers," LGBTQ+ lawyers, etc.
- **Minority Corporate Counsel Association Scorecard** – A third-party diversity scorecard that scores law firms based on their "percentile ranking of the representation of underrepresented racial and ethnic groups, gender and LBGTQ+ per level and the overall disclosure of DEI data versus firms of a similar size." https://mccascorecard.com.
- **Diversity Targets in Hiring, Promotion, and Contracting** – Beyond Mansfield Certification, racial hiring percentages (as well as promotion and compensation policies reflecting the same concepts) have become prevalent in law firm operations, as have programs that reward suppliers based on the race or sexual orientation of the owner, management, or employee composition of the supplier.
- **Diversity Fellowships** – Until a wave of lawsuits that came on the heels of the Supreme Court's decision in *Students For Fair Admissions v. Harvard*, top law firms offered diversity fellowships that were been limited to "students of color" or students in other defined categories, something that has become a focus of the EEOC. Additionally, the practice of awarding supplemental "stipends" or "scholarships" to diversity fellows above and beyond normal compensation is pay discrimination, plain and simple. Euphemistic labeling doesn't redeem brazenly discriminatory behavior. Another indication that law firms are engaging in discriminatory behavior is demonstrated by participation in third-party programs like the Leadership Council for Legal Diversity, the SEO Law Fellowship, and similar programs that, in practice, discriminate based on race or sex.
- **Diversity Mentorship Programs** – Like with diversity fellowships, law firms have prioritized training and mentorship opportunities for certain races, genders, or sexual orientations, imposing disparate treatment based on protected characteristics.

- **DEI Websites** – Many law firms have career websites and other webpages that discriminate in the provision of job notices and advertisements by containing statements indicating a preference for hiring individuals with certain racial, ethnic, or sexual orientation characteristics.
- **Workplace DEI Trainings** – Law firms have embraced workplace trainings on DEI or related issues (by whatever name they're given) that are so egregious as to constitute a plausible basis for a hostile work environment claim or allegation.

ESG

Law firms that have historically promoted or engaged in the illegal and immoral social engineering under the "ESG" brand will no longer be considered eligible for state work, absent some demonstrated, permanent change in behavior. ESG commitments by law firms place external policy goals above the objectives of their clients. When the State of Florida or its officers are clients, we are owed a duty of loyalty by our counsel and cannot allow the zealous, ethical advancement of the State's objectives to be subverted by external commitments that implicate a split loyalty or that actively undermine the interests of the State as the client. The following is a list of inexhaustive law firm practices/programs/affiliations/memberships that will give rise to a disqualifying presumption:

- **NetZero Lawyers Alliance** – The NetZero Lawyers Alliance embodies the worst of the discriminatory ESG apparatus, with firms making horizontal agreements and committing to "support the goal of net zero carbon dioxide (CO2) emissions by 2050 or sooner," "amplify the number of law firms that are members of the Race to Zero," and "support the alignment of commercial clients' legal contracts and terms with net zero, as well as their enforcement." https://www.netzerolawyers.com/our-members; https://www.netzerolawyers.com/commitments/our-commitment.
- **Legal Charter 1.5** – Legal Charter 1.5 is another legal-focused arm of the discriminatory ESG apparatus, which requires firms to commit to eight principles and lines up horizontal law firm agreements and coordination while it also "encourages and enables law firms to transition their strategies, operations and client work in line with a 1.5 degree world." https://legalcharter1point5.com.
- **NetZero Practice Groups Promoting ESG To Clients** – Law firm practice groups have played a central role in trafficking not just DEI, but also extreme, discriminatory ESG policies into Corporate America, making this promotion of discriminatory policies in a prime money-making operation while undermining the rule of law and other principles that Florida holds dear. https://clp.law.harvard.edu/knowledge-hub/magazine/issues/esg-and-lawyers/law-firms-in-the-esg-game/; https://www.thomsonreuters.com/en-us/posts/legal/law-firms-esg-practice/.

It is no excuse to say that the above-detailed policies were requested or supposedly mandated by a firm client—for example, a large corporate client. Hewlett-Packard's policy, for example, so prioritizes diversity, equity, and inclusion that its "legal department

… withholds up to 10% of all invoiced spend of those firms who fail to meet or exceed diverse minimal staffing on work for HP." Microsoft's Law Firm Diversity Program similarly steers outside counsel work to "women, minorities, LGBTQ+ people" and leverages law firms to rebalance their management committees along those same lines. But illegal, unethical, and inappropriate actions do not become legal, ethical, and appropriate merely because a client requests them. Lawyers should be called to a higher standard. Fulfilling such requests draws firms into the chain of liability for illegal, discriminatory actions. And in any event, both law firms and Corporate America should now be on notice that such discriminatory policies and commitments likely foreclose opportunities to secure government contracts, not least because these efforts at a minimum present a type of general "client-level-conflict" insofar as they implicate basic questions about the duty of loyalty owed to the State as a client and the guarantee of zealous advocacy the State expects from its counsel.

Those who have entertained and promoted these policies have, in my view, violated the public trust and the duties law firms owe to the State and its agencies as clients. For too long, law firms have felt free to misalign themselves with their clients' policies and objectives, and have instead prioritized ideological ends that are, at bottom, merely warmed over modes of prohibited discrimination and bias.

I am not unaware that law firms face immense pressure to mouth commitments to DEI and ESG principles and express support for third-party groups that promote prohibited and inappropriate discriminatory practices. Some attorneys at those firms personally reject the DEI and ESG rouses and simply want to perform excellent client. So for purposes of enforcing this policy, my office will consider—when reviewing potential law firm engagements—whether certain attorneys have demonstrated a track record of performing excellent legal work for the State.

Law firms' discriminatory commitments embodied in DEI and ESG policies must no longer displace the interests of the State and supplant the bedrock principles that have since time immemorial governed the attorney-client relationship.

For the State of Florida, it ends now.

My office will immediately commence a review of existing outside counsel engagements to assess compliance with this policy. And going forward, the office will not approve outside counsel engagements with law firms who are not in compliance with this policy.

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New DOJ Guidance Identifies Unlawful DEI Practices That Could Result in Revocation of Federal Funding

August 5, 2025
By Nonnie L. Shivers

On July 29, 2025, the U.S. Department of Justice (DOJ) released new guidance to all federal agencies clarifying what types of diversity, equity, and inclusion (DEI) practices and policies would be considered illegal discrimination by federal funding recipients, including federal contractors, as defined by the U.S. attorney general. The nine-page guidance also provides the DOJ's "non-binding" suggestions on best practices.

Quick Hits

- The DOJ recently issued guidance that defines DEI practices that the Trump administration considers to be illegal discrimination.
- The nonbinding guidance applies only to public and private employers that receive federal funds but may be helpful for all employers to review as to the federal government's interpretation of the law and enforcement priorities.
- The guidance builds on two technical assistance documents issued by the U.S. Equal Employment Opportunity Commission (EEOC) in March 2025, including limitations on DEI training.

Title VII of the Civil Rights Act of 1964 prohibits employment discrimination based on or motivated by race, color, religion, sex, or national origin. The DOJ's guidance also discusses Titles VI and Title IX of the Civil Rights Act of 1964, and the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution, as applicable to governmental employers and public entities.

The DOJ's guidance focuses on four primary areas of unlawful discriminatory policies and practices: (1) granting preferential treatment based on protected characteristics, (2) prohibited use of proxies for protected characteristics, (3) segregation based on protected characteristics, and (4) training programs that promote discrimination or hostile work environments.

In each of the four areas, the DOJ's guidance devotes significant attention to examples of unlawful practices in higher education, such as race-based scholarships, creating physical safe-spaces for specific racial and ethnic groups, and a university internship program seeking students from underrepresented racial groups. Beyond higher education, the DOJ provides other examples in each of the four areas.

As to granting preferential treatment based on preferential characteristics, the DOJ maintains these practices are illegal for recipients of federal funding:

- race-exclusive opportunities, such as internships, mentorship programs, or leadership initiatives that reserve spots for specific racial groups, regardless of intent to promote diversity;
- prioritizing candidates from underrepresented groups for hiring or promotion where the preferred underrepresented groups are determined on the basis of a characteristic like race; and
- limiting access to a facility or resource based on race or ethnicity.

As to the prohibited use of proxies for protected characteristics, the DOJ states an "unlawful proxy" occurs when a federally funded entity intentionally uses neutral criteria that function as a substitute for explicit consideration of a protected characteristic. The DOJ provides examples of potentially unlawful proxies, including selection criteria that advantage candidates who have the experiences the employer associates with certain racial groups, such as cross-cultural skills and recruiting from certain locations or organizations chosen specifically because of their racial or ethnic composition.

The DOJ states segregation based on protected characteristics occurs when programs, activities, or resources (such as training programs) separate or restrict access based on protected characteristics by creating unequal treatment or reinforcing stereotypes. According to the DOJ, "unlawful segregation" may occur when training or program eligibility separates participants into groups based on their characteristics or sets eligibility criteria based on protected characteristics. The DOJ also states diverse slates and panels, as well as diverse supplier programs favoring women- or minority-owned businesses, are unlawful uses of protected characteristics.

The DOJ further states that failure to provide sex-segregated facilities based on biological sex can risk creating a hostile work environment under Title VII where they compromise women's safety, privacy, or professional standing.

Consistent with merit-based executive orders issued by the Trump administration, the DOJ advises employers to base employment decisions on specific, measurable skills and qualifications directly related to job performance. It also advises employers to document the clear, legitimate rationales for employment decisions unrelated to protected characteristics. It instructs recipients of federal funds to ensure that federal funds do not support third-party programs that discriminate. The guidance also cautions against retaliation, noting that employees who object to or refuse to participate in discriminatory programs, trainings, or policies are legally protected from adverse actions like termination of employment or exclusion based on their opposition to those practices.

Next Steps

The DOJ's guidance is nonbinding but is important for understanding the federal government's enforcement priorities. The guidance may provide another tool to evaluate existing and potential practices and policies in light of an organization's risk tolerance. Employers may want to lean into the law to assess their compliance obligations under all applicable federal, state, and local laws, especially since the guidance "urge[s]" employers "to review all programs, policies, and partnerships to ensure compliance with federal law," and cease discriminatory practices.

The guidance reiterates that any DEI programs that could be considered as establishing unlawful quotas and preferences have been and remain the primary targets of the Trump administration. Private employers may wish to carefully review the best practices in this guidance and be on the lookout for further guidance from the EEOC and other federal agencies. With the EEOC's quorum likely to be reestablished shortly, new guidance and rescission of older guidance is anticipated. Employers may wish to pay special attention to the best practices section for any potential actions needed or desired.

Ogletree Deakins will continue to monitor developments and will provide updates on the Diversity, Equity, and Inclusion Compliance, Government Contractors, and Higher Education blogs as new information becomes available.

This article and more information on how the Trump administration's actions impact employers can be found on Ogletree Deakins' New Administration Resource Hub.

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