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# A Reshaped Landscape: DEI and Recent Federal Actions



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# Attorney Profiles



**William J. Stellmach**

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A distinguished former federal prosecutor and regulator, Bill Stellmach previously served as head of the Fraud Section of the U.S. Department of Justice (DOJ) and now co-chairs both the firm's global Investigations & Enforcement and White-Collar Defense Practice Groups, leading a team that is consistently recognized as one of the world's most elite investigations practices. His practice focuses on internal and government-facing investigations, criminal and regulatory enforcement defense, and corporate monitorships, with experience across the full spectrum of federal, state, and foreign authorities.

Drawing on a wide range of experience, Bill regularly represents a broad range of corporations, financial institutions, and their boards and executives in matters involving securities and commodities fraud, foreign bribery, economic sanctions, the False Claims Act, antitrust, ESG, international money laundering, and compliance issues and investigations related to artificial intelligence (AI) and other emerging technologies. He also has extensive experience representing corporations and individuals outside the United States in cross-border inquiries and investigations.

Bill routinely represents these clients before every major U.S. regulator, including the DOJ, the U.S. Securities & Exchange Commission (SEC), the U.S. Commodity Futures Trading Commission (CFTC), and the U.S. Treasury Department's Office of Foreign Assets Control (OFAC); numerous self-regulatory organizations, including the New York Stock Exchange (NYSE), the Financial Industry Regulatory Authority Inc. (FINRA), and Options Clearing Corporation (OCC); and several U.S. state financial and legal regulators, including the New York Department of Financial Services (NYDFS) and various state attorneys general.



**Jill K. Grant**

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Jill K. Grant is a partner in the Litigation Department. Jill represents individuals, private business, and corporations in a variety of complex litigation matters. She has extensive experience defending employers in class action litigation involving anti-discrimination and wage-and-hour laws. She also regularly counsels clients on compliance with employment laws, internal investigations, restrictive covenants and non-competition disputes and litigation avoidance. Drawing on her employment litigation experience, Jill also routinely counsels clients on a breadth of employment issues that arise in mergers and acquisitions.

Jill has an extensive pro bono practice. Her pro bono work has included drafting amicus briefs on behalf of the Innocence Network, asylum matters, and representing domestic violence victims in matrimonial and family law matters. Jill also represents Women In Need, Inc., the largest provider of shelters and transitional housing for homeless families in New York City. In 2011, Jill received inMotion's Commitment to Justice Award for her representation of a client in a contested divorce.

# Attorney Profiles



**Jeremy Bylund**  
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Jeremy Bylund is a partner at Willkie and Chair of the firm's Regulatory Litigation Practice Group.

Jeremy is an experienced litigator and former executive official at the U.S. Department of Justice who focuses his practice on high-stakes litigation, regulatory litigation, appeals, and legal strategy. He regularly represents clients in investigations, adjudications, and litigation involving DOJ, EPA, HHS, FDA, and other federal agencies. He provides holistic legal strategy in addressing regulatory issues for clients including informal advocacy, comments on rulemakings, administrative challenges, administrative appeals, and challenges to agency action in the courts.

He also has an active appellate practice, having successfully represented clients before the U.S. Supreme Court, federal courts of appeals, state supreme courts, and state appellate courts. Jeremy has first-chaired more than sixty appellate wins and has argued in federal courts of appeals across the country.

Jeremy previously served at DOJ, where he most recently held the role of Deputy Associate Attorney General, with oversight over the Environment & Natural Resources Division and the Civil Division as a member of the executive leadership of the Department.

He was recognized by the 2026 *Lawdragon 500 Leading Litigators in America* guide for his work in Litigation, Regulatory, Investigations, and Appellate.



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Andrew English, a partner in Willkie's Litigation Department, represents companies and individuals in a variety of criminal and civil investigations and enforcement actions, including enforcement actions brought by the Department of Justice (DOJ) and the Securities and Exchange Commission (SEC). He has significant experience conducting internal and government-facing investigations, including global cross-border matters. He regularly counsels clients on Foreign Corrupt Practices Act (FCPA) and anti-corruption due diligence, and advises corporations on the development of compliance and whistleblower programs, policies, and trainings.

Andrew was named a Future Star in Litigation for Washington, D.C. in the 2025 edition of *Benchmark Litigation's* "Definitive Guide to America's Leading Firms and Attorneys." He also was recognized in the 2022 and 2023 editions of *Best Lawyers: Ones to Watch for Criminal Defense: White-Collar*.



**Barnett Harris**  
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Barnett Harris is an associate in Willkie's Litigation Department. He focuses his practice on high-stakes civil litigation and internal and government-facing investigations. He previously clerked for Hon. Patrick E. Higginbotham, United States Court of Appeals, 5<sup>th</sup> Circuit, and Hon. John F. Kness, United States District Court, Northern District of Illinois.

# Agenda

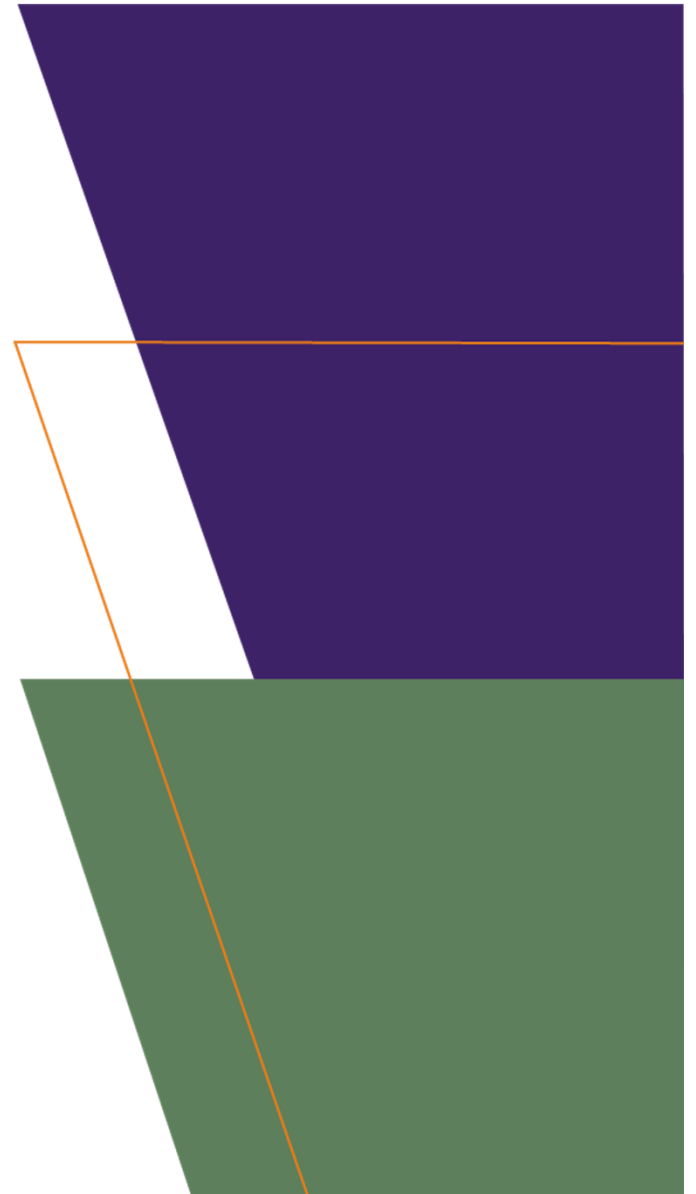
- Trump Administration's Focus on DEI
- DOJ Enforcement Actions Related to DEI
- DOJ's Enforcement Priorities
- Investigations & Lawsuits Beyond DOJ
- Actions by States
- Takeaways



# Trump Administration's Focus on DEI



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## Trump Administration On DEI

- “DEI would have ruined our country and now it’s dead.” President Donald Trump, January 31, 2025.
- On February 19, 2026, Deputy Assistant Attorney General (“DAAG”) Brenna Jenny spoke at the Federal Bar Association’s Qui Tam Conference.
- In a panel regarding the use of the FCA to combat what the Trump administration has called “illegal DEI,” DAAG Jenny explained that DOJ’s “core” FCA focus is on what she characterized as companies that make hiring and promotion decisions based on protected characteristics, including:
  - Race- or sex-based demographic goals;
  - Compensation tied to demographic goals;
  - Linking DEI goals to employee performance reviews;
  - Career advancement programs with restricted eligibility; and
  - Diverse slate policies applied unevenly

## Executive Orders

- On January 21, 2025, President Trump signed Executive Order 14173, which revoked prior executive orders.
  - In 1965, President Lyndon Johnson had issued Executive Order 11246, which required government contractors to “take affirmative action to ensure” that job applicants and employees were considered and employed “without regard to their race, creed, color, or national origin.”
  - Subsequent executive orders expanded Johnson’s order to include, *inter alia*, sex, sexual orientation, and gender identity.
  - Executive Order 14173 revoked these earlier orders and required government contractors to certify they did not have a DEI program that violated applicable law.
- On March 26, 2026, President Trump signed Executive Order 14398.
  - It mandated that all federal contracts include a new clause prohibiting “racially discriminatory DEI activities” and explicitly acknowledge the clause was “material to the Government’s payment decisions.”

## Acting Attorney General Todd Blanche Memo: Civil Rights Fraud Initiative

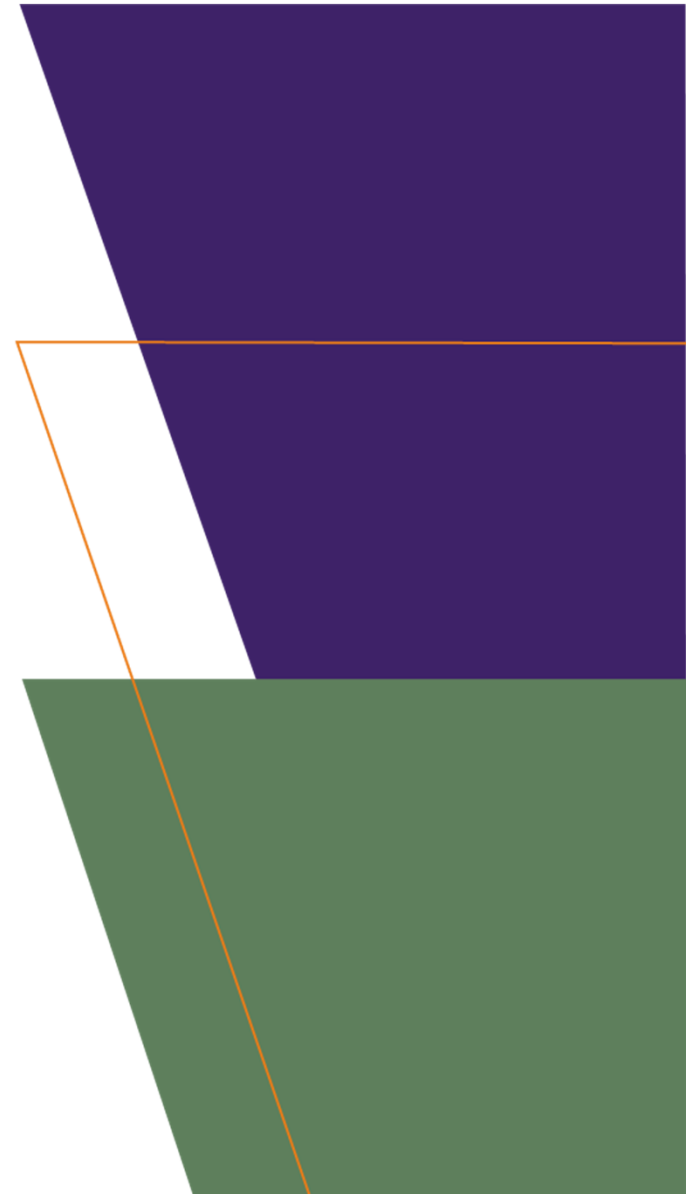
- On February 5, 2025, then-Attorney General Pam Bondi issued a memorandum entitled “Ending Illegal DEI and DEIA Discrimination and Preferences,” which stated that the Department of Justice would “investigate, eliminate, and penalize illegal DEI and DEIA preferences, mandates, policies, programs, and activities in the private sector and in educational institutions that receive federal funds.”
- On May 19, 2025, then-Deputy Attorney General Todd Blanche issued a memorandum announcing the formation of the “Civil Rights Fraud Initiative.”
- Citing to Attorney General Bondi’s memorandum, Blanche stated that one of “the most effective ways to accomplish” those objectives was “through vigorous enforcement of the False Claims Act.”
- The Deputy Attorney General stated the Initiative would be led by the Civil Division’s Fraud Section and the Civil Rights Division.
- The Initiative focuses on government contractors, institutions of higher education, and other recipients of federal funds through grants or awards.



# DOJ Enforcement Actions Related to DEI



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# PayPal Equal Credit Opportunity Act Resolution



- On May 12, 2026, PayPal reached a settlement to end DOJ’s “fair-lending investigation into a discriminatory investment program created for Black and minority-owned businesses.”
- On June 11, 2020, PayPal announced a “\$530 million commitment to support Black and minority-owned businesses and communities in the U.S.”
- In a press release announcing the settlement, DOJ stated PayPal’s program “gave a preference to businesses based on race, color and national origin.”
  - The press release indicates such conduct may have violated the Equal Credit Opportunity Act, which prohibits creditors from discriminating on the basis of *inter alia* race, color and national origin, although the settlement is clear DOJ had not made a final determination. PayPal denied any liability.
- As part of the settlement, PayPal agreed to launch a “Small Business Initiative” and waive processing fees for \$1 billion of transactions to eligible small businesses.

## IBM False Claims Act Resolution



- On April 10, 2026, DOJ announced its settlement with IBM over what DOJ characterized as “discrimination through illegal DEI Practices.”
- The settlement agreement identified four categories of prohibited practices:
  - Compensation adjustments tied to demographic targets.
  - Differential hiring procedures based on protected characteristics.
  - Race- and sex-based demographic goals informing personnel decisions.
  - Access-restricted development and mentoring programs.
- IBM denied it engaged in these practices, but agreed to pay \$17,077,043. Of that amount, \$8,204,348 was restitution.
  - DOJ stated the settlement amount reflected IBM’s cooperation with the investigation, including early factual disclosures, providing information to help calculate damages and penalties, and “voluntary remedial measures.”
- IBM had nearly \$9 billion in government contracts, both prime and subcontracts, during the relevant period (2019–2026).

## Litigation Against Harvard



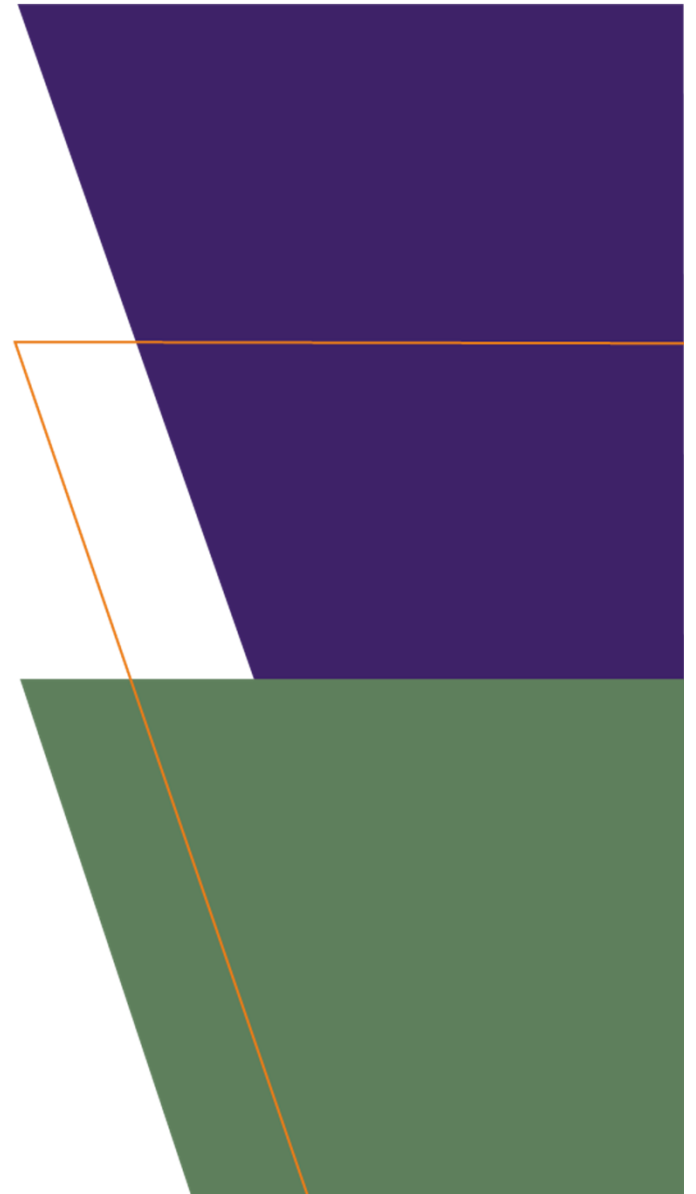
- Harvard and the Administration are engaged in numerous litigations, including ones related to government grants, admissions practices, and student visas.
- In May 2025, several agencies terminated grants to Harvard on the stated basis that Harvard was engaging “in race discrimination including in its admissions process” and had shown a “lack of concern for the safety and wellbeing of Jewish students.”
- In April 2025, Harvard sued to prevent the termination of the grants. Also in April 2025, DOJ initiated “compliance reviews” of Harvard’s undergraduate, medical-school, and law-school admissions programs.
- In September 2025, the district court found the grant terminations violated Harvard’s free speech rights and had not followed procedural requirements.
- The case is on appeal at the First Circuit, along with litigation related to the Trump administration’s revocation of Harvard’s ability to sponsor student visas.
- In February 2026, DOJ sued Harvard for its “refusal to cooperate with the [DOJ’s] investigation,” arguing as a recipient of federal funding, Harvard is required to cooperate with compliance reviews. DOJ is seeking an injunction.



# DOJ's Enforcement Priorities



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## What is Illegal?

- Employment decisions motivated by protected characteristics.
  - Any hiring, firing, promotion, demotion, or compensation decision based in whole or in part on race, sex, or other protected traits — even if framed as advancing “diversity.”
- Quotas and workforce balancing.
  - Using quotas or otherwise “balancing” a workforce by race, sex, or other protected traits.
- Diverse slate/diverse sourcing requirements.
  - Requiring diversity in the composition of hiring panels or candidate pools if they involve selection based on protected characteristics.

## What is Illegal (cont'd)?

- Segregating or limiting access to programs.
  - Limiting membership in affinity groups, training programs, mentoring, sponsorship, fellowships, or leadership development opportunities based on race, sex, religion, or national origin.
- DEI training that creates a hostile work environment.
  - Training that is discriminatory in content, application, or context.
- Facially neutral criteria used as proxies.
  - Cultural competence, lived experience, and geographic targeting, that function as proxies for protected characteristics if designed or applied with the intention of advantaging or disadvantaging individuals based on protected characteristics.

## What is Lawful?

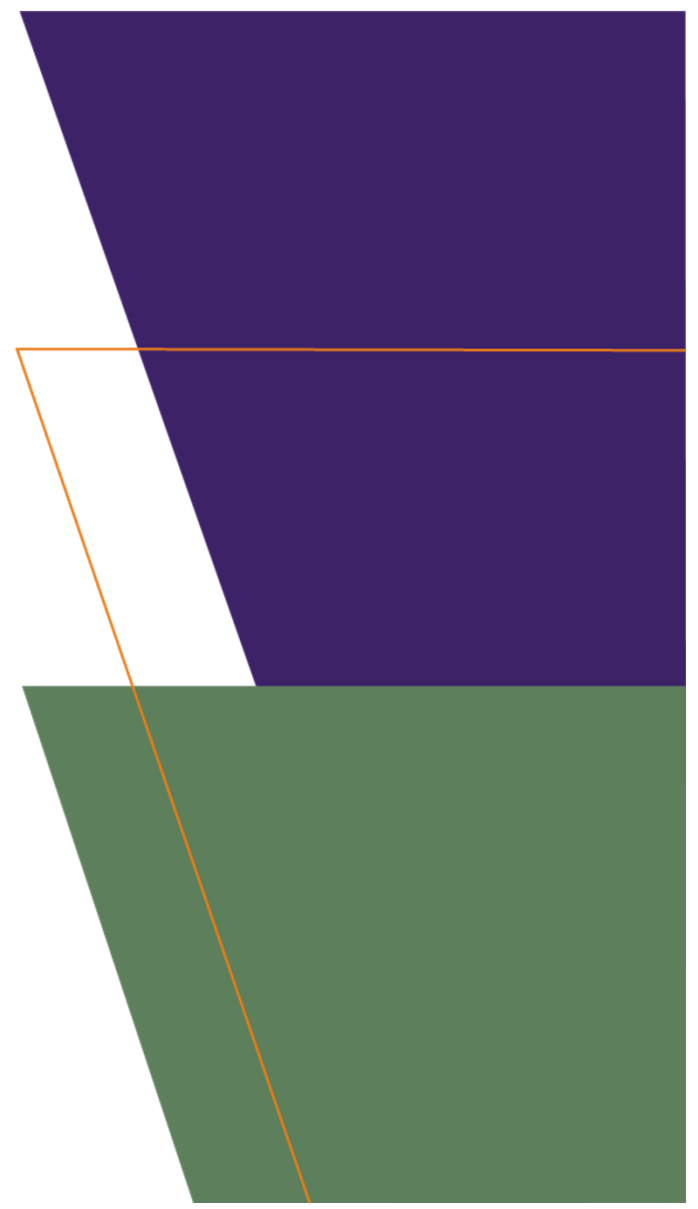
- Open-to-all programs.
  - Employers may maintain DEI programs that are open to all employees and do not limit access based on protected characteristics.
- Race-neutral outreach and recruitment.
  - DEI programs may be lawful provided that an employer is not taking an employment action motivated, in whole or in part, by an employee's or applicant's race, sex, or another protected characteristic.



# Investigations & Lawsuits Beyond DOJ



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# Equal Employment Opportunity Commission

- The EEOC is actively investigating corporate DEI programs and initiatives.
- Andrea Lucas, Chair of the EEOC, announced a major enforcement shift in December 2025.
  - Lucas stated that the EEOC will closely scrutinize any workplace initiatives that consider race, sex, or other protected characteristics in employment decisions.
  - The EEOC's plan to intensify its scrutiny of DEI programs aligns with the Chair's stated goal "to shift to a conservative view of civil rights."



## Public EEOC Investigations Related to DEI

|                               | Allegation   | Court                         |
|-------------------------------|--|-------------------------------|
| Nike                          | Disparate treatment against White employees.   | Eastern District of Missouri  |
| Northwestern Mutual           | Engaging in unlawful employment practices through its DEI initiatives, specifically denying a promotion to one of its compliance officers.         | Eastern District of Wisconsin |
| Coca-Cola Beverages Northeast | Unlawful employment practices against male employees, specifically a two-day team-building event the EEOC alleges was limited to female employees. | District of New Hampshire     |

## Private Litigation

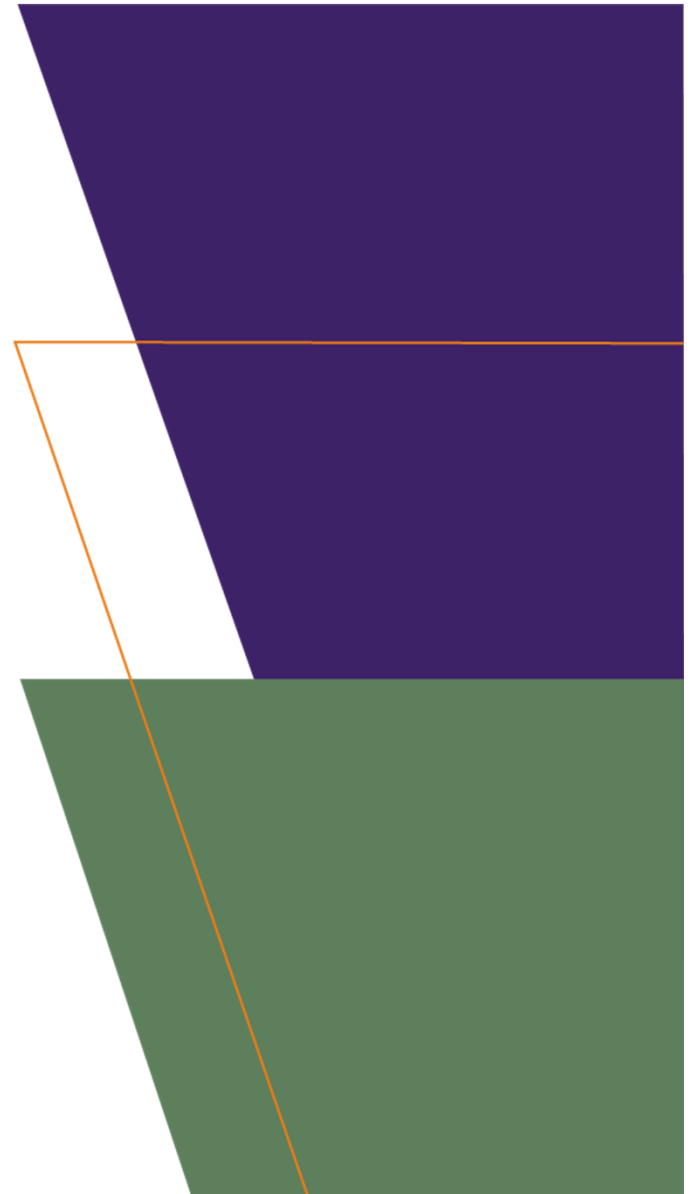
- Private litigants are also bringing claims against companies over discrimination related to a company's DEI programs.
- One example is *Dill v. IBM*, which was brought in the Western District of Michigan.
  - Randall Dill is a former employee of IBM.
  - He alleged that IBM terminated him because he is a white male who did not fit IBM's "preferred demographic."
  - According to Dill, IBM "incentivize[d] its executives to engage in impermissible race and sex discrimination" because "executive compensation metrics . . . include[d] a diversity modifier," which Dill alleged "condition[ed] executive compensation on how much the company discriminates in hiring."
  - Dill alleged IBM's conduct violated the Civil Rights Act of 1866 and Title VII of the Civil Rights Act of 1964.
  - Dill and IBM ultimately engaged in mediation and settled the case. The settlement is not public.



# Actions by States



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## Sample of DEI-Related State Actions

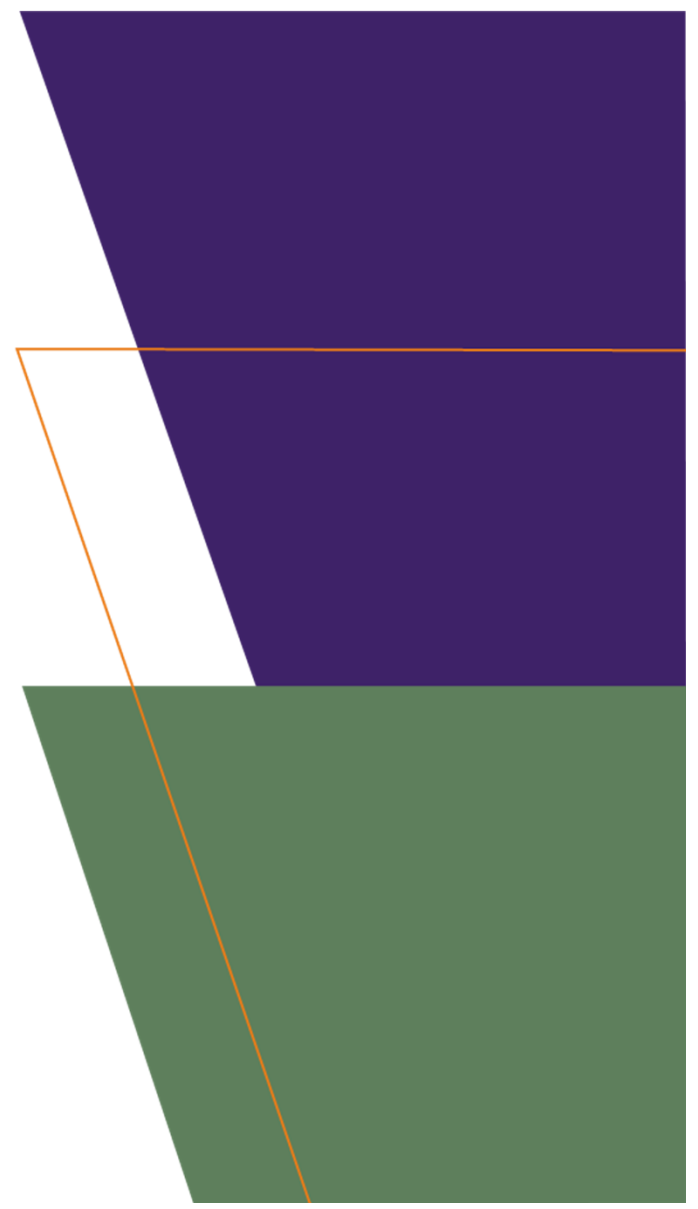
- The Department of Education sent a letter to states requesting certification that states were in compliance with Title VI of the Civil Rights Act, including not allowing “illegal DEI practices.”
  - 19 states filed suit: CA, CO, CT, DE, HI, IL, MD, MA, MI, MN, NV, NJ, NM, NY, OR, RI, VT, WA, and WI.
- 16 states issued “Multi-State Guidance Concerning Diversity, Equity, Inclusion, and Accessibility Employment Initiatives:” AZ, CA, CT, DE, HI, IL, MA, ME, MD, MN, NV, NJ, NY, OR, RI, and VT.
- In February 2025, the Missouri AG brought a suit against Starbucks alleging the company engaged in discriminatory practices that advantaged non-white, non-male employees.
- In May 2026, AGs from Texas, Nebraska, Iowa, and West Virginia launched coordinated lawsuits against proxy advisory firm Institutional Shareholder Services, Inc. (“ISS”), alleging ISS misled investors while advancing DEI policies through its corporate voting recommendations.
- In January 2025, 11 states—AL, GA, ID, IN, IA, MT, NE, SC, TX, UT, and VA—sent letters to BlackRock, Goldman Sachs, JPMorgan Chase, Bank of America, Citigroup, and Morgan Stanley saying their “commitment to DEI and ESG policies” may violate “their legal, contractual and fiduciary obligations.”
- In January 2025, 19 states sent a letter to Costco urging it to end unlawful discrimination “imposed by” DEI policies: AL, AR, GA, IA, ID, KY, KS, LA, MO, MT, NE, ND, OH, OK, SC, SD, TN, TX, and VA.



# Takeaways



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# Steps to Consider Today



Conduct a risk assessment.

- ↳ *Review recent settlements, guidance, executive orders, and other similar documentation.*
- ↳ *Evaluate all relevant existing policies and practices.*



Map each existing program against the practices on which the Trump administration is focused.



Train employees.

- ↳ *Implement training programs that instruct employees about legal restrictions on considering race, color, religion, sex, national origin, sexual orientation, and other protected classes in employment decisions.*
- ↳ *Implement training programs that instruct employees about company policies to promote compliance.*



Incorporate audits of compliance as part of audit plan.



Document compliance.

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# Responding to a Government Inquiry



Consider the nature of the request (voluntary, subpoena, etc.).



Document preservation.



Consider targeted, internal investigation/review.

↳ *A review of the company's relevant policies.*

↳ *Interviews with key company personnel.*

↳ *If the inquiry is prompted by a complainant, fact gathering related to the complainant and the concerns raised.*



Based on findings, determine approach to take with enforcement authority.

***Government inquiries are fact-intensive, and the response will therefore depend on the specifics of the matter.***

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**Questions?**



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