New DOJ Memo Addresses Legality of DEI Programs for Federal Funding Recipients

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On July 30, 2025, the Department of Justice released a memo from Attorney General Pam Bondi offering guidance to federal agencies and recipients of federal funding regarding practices that the administration views as potentially unlawful under federal antidiscrimination laws. While the memo focuses heavily on institutions of higher education, its implications extend to all federal funding recipients, federal contractors, and employers subject to Title VII.

The memo outlines the administration's interpretation of federal law as it applies to diversity, equity, and inclusion (DEI) initiatives and similar programs. It provides examples of practices the DOJ considers unlawful or legally questionable, as well as "best practices" intended to help organizations avoid liability.

Key Takeaways

- **Applicability Beyond Higher Education:** Although many examples concern colleges and universities, the guidance expressly encourages all entities subject to federal antidiscrimination laws, including public and private employers, state and local governments, and contractors, to review and evaluate their DEI programs.
- **DOJ's Interpretations Are Not Binding Law:** The memo reflects the DOJ's interpretation of existing law, not a change in the law itself. Courts remain the final arbiters of what federal statutes mean, and state laws may impose different or additional requirements, especially in areas such as transgender rights, where the administration's views may conflict with both state law and judicial precedent.

Examples of Practices the DOJ Views as Unlawful or Problematic

Race-Based Scholarships or Opportunities: Programs that limit access to scholarships, internships, or leadership initiatives based on race (e.g., a "Black Excellence Scholarship") violate federal law unless they meet the very high bar for race-conscious programs.

Race-Exclusive Facilities or Resources: DEI initiatives that designate certain physical spaces (e.g., "BIPOC-only lounges") or create identity-based access restrictions may amount to unlawful segregation or exclusion, even if intended to foster inclusion.

Segregated Training or Affinity Groups: Programs that separate participants based on race (e.g., mandatory DEI sessions with race-exclusive breakouts) risk violating civil rights laws. Voluntary, open-to-all professional support networks may be permissible.

Diverse Slate Hiring Requirements: Mandating racial or demographic composition in interview pools (e.g., requiring a minimum number of minority candidates per hiring slate) may violate the law if used to exclude otherwise qualified individuals based on race.

Race- or Sex-Based Contracting Preferences: Automatically favoring minority- or women-owned businesses in procurement decisions, without narrowly tailoring those preferences to a compelling government interest, raises legal concerns.

Note: The DOJ flags this area as particularly sensitive given that many entities, including government contractors, are required to establish utilization goals for disadvantaged businesses. The legality of these long-standing programs may now be in flux.

Proxies for Race or Sex Consideration:

- *Cultural Competence or "Lived Experience" Requirements:* When tied to race or ethnicity, such criteria may unlawfully advantage candidates based on protected characteristics
- *Diversity Statements or "Obstacle" Essays:* Requiring narratives that implicitly reward racial or gender identity may function as indirect proxies for discrimination

The memo sharply narrows the permissible interpretation of the Supreme Court's language in *Students for Fair Admissions v. Harvard*, particularly Chief Justice Roberts' explicit statement that applicants may discuss how race shaped their experiences, provided race itself is not the basis for decisions.

Recommended "Best Practices"

To reduce legal risk, the DOJ encourages organizations to:

- **Eliminate Demographic-Driven Goals:** Avoid designing policies or using facially neutral criteria (e.g., "first-generation student" or "underserved zip code") to achieve demographic outcomes tied to protected characteristics
- **Justify Criteria with Legitimate, Non-Discriminatory Rationales:** Document how selection criteria are related to objective performance or institutional needs — not race, sex, or other protected traits
- **Evaluate Potential Proxy Effects:** Before implementing race-neutral policies, assess whether they function in practice as proxies for race, sex, or other protected statuses
- **Abandon Diversity Quotas:** Avoid policies that require representation of specific demographic groups in candidate pools, committees, or final hiring selections
- **Include and Enforce Nondiscrimination Clauses in Contracts:** Require third parties receiving federal funds to comply with nondiscrimination obligations. Monitor compliance and terminate funding where violations occur.

Note on Scope of Coverage

The DOJ memo applies to recipients of federal financial assistance, which includes grants, loans, subsidies, and insurance, not federal procurement contracts. However, many principles may be relevant to federal contractors, particularly where compliance with Title VII or similar statutes is at issue.