

# The IBM \$17 Million Settlement:

## What Every Federal Contractor Needs to Know

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[DAVE]

Moderator

[FORTNEY]

David Fortney

[RHINESMITH]

David Rhinesmith

AGENDA AT A GLANCE

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# Opening & Context

## KEY ANNOUNCEMENT

### DATE

April 10, 2026

### AMOUNT

\$17,077,043

### WHO

IBM — federal IT contractor

### ANNOUNCED BY

Acting AG Todd Blanche

### INITIATIVE

Civil Rights Fraud Initiative

### FIRST-EVER

FCA settlement targeting DEI

## Setting the Stage

- **EO 14173:** Directed federal agencies to end DEI-related preferences
- **EO 14398:** Signed March 26, 2026 — directly targets DEI discrimination by federal contractors
- **Enforcement tools:** Debarment, suspension, contract cancellation — AND the False Claims Act
- **Bottom line:** IBM is the first case, not the last

# The False Claims Act

## Background & Power

3x

Treble damages  
on actual harm

30%

Whistleblower share  
of any recovery

1863

Year FCA was  
first enacted

**Civil War origins:** Enacted 1863 to combat defense contractor fraud; strengthened by the 1986 Amendments Act

**Core theory:** Any entity that knowingly submits a false claim to the government is liable — IBM's compliance certifications were allegedly false

**Per-claim penalties:** \$14,000–\$28,000 per false claim — each invoice or contract certification can be a separate claim

**Qui tam provision:** Private whistleblowers ('relators') can sue on the government's behalf and collect 15–30% of any recovery

**Broad reach:** Applies to all federal fund recipients — contractors, subcontractors, universities, nonprofits, hospitals, grantees

# Scienter: What DOJ Must Show

## "Knowingly" Under the FCA — Three Pathways

### Actual Knowledge

Defendant knew the claim was false

### Deliberate Ignorance

The 'ostrich' theory — deliberately avoided learning the truth

### Reckless Disregard

Ignored obvious red flags about truth or falsity

**No specific intent to defraud required:** This is what makes the FCA more powerful than common law fraud

**SuperValu (SCOTUS 2023):** Scienter focuses on what defendant actually knew or believed — not an 'objectively reasonable' standard

**ESG reports as evidence:** Publicly disclosed DEI programs documented in corporate filings support the government's scienter argument

**IBM's cooperation:** Early disclosure and help calculating damages implicitly acknowledged awareness of the underlying conduct

# Burden of Proof: FCA vs. Title VII

## False Claims Act

Same civil standard: preponderance of the evidence

Government proves IBM falsely certified compliance

The PROGRAM is discriminatory — no individual victim required

Harm is to the government (billed for non-compliant contract)

Qui tam: case may be filed in secret before target knows

Treble damages + per-claim penalties apply automatically

## Title VII / OFCCP

Same civil standard: preponderance of the evidence

Must show disparate treatment or disparate impact

Requires statistical or anecdotal evidence about identifiable employees

Harm is to individual employees — remedies flow to them

Proceedings are open; targets typically notified early

Remedies: back pay, hiring relief, conciliation — no treble damages

**Key insight:** A company could survive an OFCCP audit but still face FCA liability for the same underlying conduct

# The IBM Settlement — What DOJ Alleged

## 1 Diversity Modifier

### COMPENSATION

Bonus pay tied to demographic targets — creating a financial incentive to consider race, sex, or national origin in pay decisions

## 2 Diverse Interview Slates

### HIRING

Interview eligibility altered based on protected characteristics — different access to the hiring process by race, sex, or national origin

## 3 Demographic Goal-Setting

### WORKFORCE PLANNING

Race and sex targets for business units used to drive personnel decisions — effectively functioning as de facto quotas

## 4 Restricted Programs

### DEVELOPMENT

Mentorship, training, and leadership development programs with formal eligibility restrictions by race, sex, or national origin

⚠ FCA Hook: IBM allocated the costs of these programs to federal contracts — converting employment law violations into fraud on the government

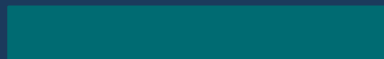
# The Money: Where Did It Go?

## SETTLEMENT BREAKDOWN

# \$17,077,043

Total Settlement

Restitution



\$8,204,348

Civil Penalties



\$8,872,695

**No money to individuals:** All \$17M went to the U.S. Treasury — the FCA is a government revenue recovery statute, not a victim compensation statute

**The government is the victim:** IBM allegedly defrauded the government by billing for non-compliant contracts

**Individuals have other remedies:** Employees who were discriminated against may have separate Title VII or Section 1981 claims — but those were not part of this settlement

**No qui tam relator:** This was a government-initiated investigation — no whistleblower collected 15–30% here. That may not be true in future cases.

# No Admission of Guilt — Is That Normal?

*Yes. No-admission settlements are the norm in civil FCA resolutions.*

## Why DOJ Accepts No-Admission

Litigation is expensive and uncertain — \$17M now beats a multi-year trial

Novel legal theory (FCA + DEI) carries real appellate risk

Cooperation credit guidelines reward early resolution

Sets public precedent without requiring admission

## Why IBM Accepts No-Admission

Prevents use as collateral estoppel in future civil litigation

Protects against shareholder derivative suits

Avoids formal finding of racial discrimination on the record

Limits exposure in other jurisdictions or regulatory proceedings

Cooperation Credit: IBM disclosed facts early, helped calculate damages, and voluntarily terminated programs. This likely saved IBM tens of millions — and sets a roadmap for future targets.

# The Legal Hook:

## Title VII & FAR — Not the Executive Orders



### Title VII (1964)

Anti-discrimination law on the books for 60+ years  
— not a new rule



### FAR 52.222-26

Equal Opportunity clause in virtually every federal contract



### January 2019

DOJ reached back 7+ years — pre-dating both executive orders entirely



### No EO Required

IBM's programs were allegedly illegal under pre-existing law all along

*Critical implication: Every federal contractor with similar programs dating back to 2019 faces potential historical exposure — not just going forward.*

# Prevention: What Could IBM Have Done?



## Employment Law Review

Audit DEI programs against Title VII — not just D&I goals. Engage employment lawyers, not only D&I consultants



## Remove Comp Modifiers

Never tie bonus pay to demographic outcomes. This is the clearest form of documented intentional discrimination



## Goals ≠ Quotas

Aspirational workforce goals are defensible; hard demographic targets tied to pay or hiring eligibility are not



## Open Access Programs

Design development programs that are open to all — never restrict by race, sex, or national origin



## Cost Allocation Audit

Determine whether DEI program costs are billed to federal contracts.



## Proactive Self-Audit

Companies that find and disclose problems early receive significantly better treatment under DOJ's cooperation guidelines

# What Employers Should Do Right Now

1

## Privileged DEI Audit

Engage outside counsel under attorney-client privilege. Map every program against IBM's four covered conduct categories.

2

## Review Contract Certifications

Every federal contract has Title VII compliance certs. Know what you certified and ensure accuracy.

3

## Audit Cost Allocation

Determine if DEI program costs are charged to federal contracts — directly or through overhead pools.

4

## Review Executive Comp

Eliminate any incentive compensation tied to demographic outcomes or DEI metrics.

5

## Train Managers Now

Document training on permissible vs. impermissible practices. Documented decisions support scienter defense.

6

## Disclosure Readiness

Have a clear protocol ready. Self-disclosing before DOJ arrives can be the difference between \$17M and \$100M+.

7

## Watch the Qui Tam Channel

The Civil Rights Fraud Initiative encourages whistleblowers. Any termination of someone with program knowledge warrants heightened review.

8

## Don't Assume Size Protects You

FCA exposure scales with contract revenue volume. A \$50M contractor faces proportionally enormous liability.

# Key Takeaways

- 1 IBM is the first case, not the last — DOJ has announced this initiative will continue
- 2 The legal hook is Title VII + FAR compliance certifications — not the executive orders
- 3 Retroactive reach to January 2019 means historical DEI programs carry current exposure
- 4 FCA treble damages + per-claim penalties dwarf anything from a typical employment case

*"Protecting your organization requires treating this as what it is — an active enforcement priority, not a future risk."*