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Navigating Title VI's Nondiscrimination Requirements and Advancing Equal Opportunity

INFORMATION FOR ORGANIZATIONS THAT RECEIVE FEDERAL FUNDING

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I. BACKGROUND

The Lawyers' Committee for Civil Rights Under Law engages in legal, policy, and pro bono efforts to protect racial equity, diversity, equity and inclusion, and the rule of law amid escalating attacks from federal and state governments and private actors. The Lawyers' Committee's efforts aim to protect and advance equity initiatives across sectors (e.g., education, employment, healthcare, and the nonprofit and philanthropic sectors). Many nonprofit organizations across sectors that receive federal funds have programs designed to create opportunities for Black, Indigenous, and other communities of color. These programs are critical to advancing racial equity and are not categorically unlawful.

However, recent executive actions to cancel federal funding for programs that promote diversity, equity, inclusion, and accessibility have caused confusion and created risk for organizations that rely on this funding. Such organizations are subject to Title VI of the Civil Rights Act of 1964. Title VI prohibits discrimination based on race, color, or national origin, including shared ancestry or ethnic characteristics,[1] under any program or activity receiving federal financial assistance, such as a grant from a federal agency.

While this resource focuses on Title VI, other federal antidiscrimination laws may also apply to entities receiving federal financial assistance, including but not limited to:

- Section 504 of the Rehabilitation Act (prohibits disability discrimination in any program or activity receiving federal financial assistance);
- Title IX (prohibits sex-based discrimination in any education program or activity that receives federal financial assistance); and
- Age Discrimination Act (prohibits discrimination on the basis of age in programs and activities receiving federal financial assistance).

Racial equity programs and programs or activities advancing diversity, equity, inclusion, and accessibility are helpful or even necessary to identify and remove barriers to equal opportunity and create a level playing field for all. Such programs or practices can and do help prevent or correct harassing conduct and other forms of discrimination, and foster a more positive and inclusive climate.

This resource is intended to provide guidance to nonprofits receiving federal funds on how to further equal opportunity in line with their Title VI obligations, notwithstanding the federal government's attacks on diversity, equity, inclusion, and accessibility programs. It is important for any organization receiving federal financial assistance to be aware of Title VI requirements, especially as to the eligibility and selection criteria for the relevant program. Race-based or race-exclusive eligibility and selection criteria can leave a federally funded organization especially vulnerable to violation of Title VI's nondiscrimination requirements. However, there are ways to stay true to the organization and program's goals, discussed later in this resource, that are well within the law.

II. ATTACKS ON DIVERSITY, EQUITY, INCLUSION AND ACCESSIBILITY AND RESULTING LEGAL LANDSCAPE

The current Trump Administration has increased its scrutiny and investigation of diversity, equity, inclusion, and accessibility programs and efforts, while also slashing federal funding. At the beginning of the Administration, President Trump issued two Executive Orders ("the anti-diversity Executive Orders"): Executive Order 14173, titled "Ending Illegal Discrimination and Restoring Merit-Based Opportunity," and Executive Order 14151, titled, "Ending Radical and Wasteful DEI Programs and Preferencing." These Executive Orders[2] direct federal agencies to:

- terminate any internal federal government diversity or equity-related activities and programs,
- terminate all "equity-related grants and contracts," and
- include in every federal contract or grant award a certification, enforceable through the False Claims Act, that the recipient "does not operate any programs promoting DEI that violate any applicable Federal antidiscrimination laws."

These executive orders make no effort to define or describe the types of "DEI" activities or speech that might cause organizations to lose their federal funding or contracts. They create a dilemma for many nonprofit organizations working to advance equity—either discontinue providing critical services to historically marginalized communities for fear of triggering legal liability and damages, or risk losing federal funding. In doing so, the anti-diversity Executive Orders chill organizations' provision of services and programs that are core to their missions.

Executive orders are directives issued by presidents announcing their administration's policies and directing the enforcement priorities and actions of federal agencies during those administrations. They do not have the force of law and do not change long-standing antidiscrimination obligations under civil rights laws. Courts, not agencies, ultimately interpret federal laws.

Many nonprofits and local and state governments have filed several lawsuits challenging these Executive Orders as unconstitutional, and their legality is currently being determined by the courts. Several federal district courts have determined that certain provisions of these Executive Orders are likely unlawful and issued preliminary injunctions, but some of those rulings are currently on appeal.[3] Therefore, organizations should continue monitoring these cases to determine whether and how a certain executive order can be implemented at any given time as courts decide these litigation challenges.[4]

Federal agencies also are changing federal grant conditions and terminating grants they deem to be in violation of the anti-diversity Executive Orders. Many of these agency actions are also the subject of lawsuits. Some organizations are challenging agencies' termination of grants where a program was created by statute and Congress has appropriated the funds.

In some situations, organizations whose federal grants or contracts were terminated may also have rights to recover money damages under their grant agreement or contract in the Court of Federal Claims.

In May 2026, the Trump Administration proposed substantial changes to the Uniform Guidance, a set of government-wide rules governing federal grants and cooperative agreements. The proposal is wide-ranging and includes provisions directing agencies not to fund, promote, or facilitate "illegal" diversity, equity, or inclusion.[5]

III. TITLE VI OBLIGATIONS

Title VI prohibits grantees from excluding or otherwise intentionally discriminating against applicants, participants, or beneficiaries of their programs and activities because of their race, color, or national origin.

The fact that a particular program or activity has a race-related purpose or theme does not mean that it categorically violates Title VI. Though every situation is fact-specific, in general, programs or activities focused on serving a particular community because of their unique needs, (e.g., ensuring Black communities have equal access to homeownership because of the historic and ongoing discrimination in the real estate market) but that are open to all, would not violate Title VI.

By contrast, maintaining policies or practices that treat individuals differently in making decisions on the basis of race, color, or national origin, such as decisions about eligibility or selection for participation in a program, would likely violate Title VI.

Such intentional, race-based classifications in federally funded programs are subject to strict scrutiny review, the highest, most stringent standard of judicial review developed by federal courts to evaluate the constitutionality of government actions.[6] Under strict scrutiny review, making decisions based on race is only justified when remedying "specific identified instances of past discrimination that violated the Constitution or a statute."[7] The legality of longstanding race-and gender-conscious programs created by Congress to address well-documented discrimination, such as contracting programs to support minority and women small business owners, and special purpose credit programs to expand access to credit for underserved communities, is the subject of ongoing litigation.[8]

A. WHAT IS "FEDERAL FINANCIAL ASSISTANCE"?

Title VI prohibits discrimination based on race, color, or national origin under any "program or activity" receiving federal financial assistance. "Federal financial assistance" can mean an award or grant of money. It can also be nonmonetary, such as the use or rental of federal land or property for nominal consideration, or a loan of federal personnel to state or local government. This means that any entity that receives federal financial assistance—including a pass-through grantee or subgrantee—is prohibited from engaging in discrimination on the basis of race, color, or national origin.

Title VI obligations apply once an entity accepts federal financial assistance; this means even before any signed assurance, a simple acceptance of federal funds can trigger Title VI requirements. And a federal agency may review an organization's Title VI compliance even if their federal grant or award has ended; as long as a grantee received federal funds during the time of any alleged discrimination, Title VI coverage applies.

If a private, nonprofit organization is not a federal grantee, but it receives financial support from, or partners with, a federal funding recipient, such as a public university, that does not necessarily subject the nonprofit to the requirements of Title VI.[9] Benefitting economically from federal assistance alone does not make you a federal "recipient." Federal law distinguishes between subrecipients, who are considered extensions of direct recipients of federal funding and are subject to compliance requirements in a sub-award, and contractors, which are not.[10] However, if the partner receiving federal funding is the subject of a Department of Justice investigation, the partnership may also be scrutinized in the investigation.

B. IF MY ORGANIZATION RECEIVES FEDERAL FINANCIAL ASSISTANCE, DOES TITLE VI APPLY TO ALL OF THE ORGANIZATION'S ACTIVITIES?

The scope of Title VI's application to a federal grantee depends on a variety of factors, including:

(1) whether the grantee is considered a public entity or private entity;

(2) the funding sources for particular programs and activities;

(3) how the federal funds are used in relation to any private funds throughout the organization;

(4) the nature of the private entity's purpose or programs.

For public entities, Title VI applies more broadly. Examples of public entities include state and local governments, public colleges and universities, and public elementary and secondary school districts. Under the Civil Rights Restoration Act of 1987, all operations of a public entity receiving federal funding are subject to Title VI's non-discrimination requirements. If a federal grantee can be considered a public entity, such as a public university, Title VI applies to all of the organization's programs and activities, not just the one that receives federal funding. Note that this also may be expressly stated in the "terms and conditions" section of the respective federal grant agreement.

For private entities, including nonprofit organizations, how broadly Title VI applies depends on several factors. Title VI may apply to all of a private organization's activities where:

(1) the federal financial assistance broadly supports an entire organization, rather than a specific, narrow program or purpose;

(2) the organization's federal grants are comingled with private funds across all programs and operations;

(3) the entire private entity is "principally engaged" in a public purpose, such as the business of providing education, health care, housing, social services, or parks and recreation.[11]

Even if most of a grantee's funding is based on private donations, grants, or membership fees, if the grantee has even one grant from the federal government, Title VI can apply in a more limited way with respect to the federally-funded program. For example, if an organization has many different programs, and a federal grant supports one of its community arts programs, the organization must comply with Title VI with respect to the community arts program and may not exclude individuals from participation based on race, color or national origin.

C. DOES TITLE VI APPLY TO PASS-THROUGH GRANTEES OR SUBGRANTEES?

Generally, yes. Sometimes a federal grantee may select other entities to be pass-through grantees or subgrantees to help with work on the federally funded program. A subgrantee receives the money from the direct grantee and uses it to carry out a program or activity.[12] Title VI's nondiscrimination requirements apply to the process the direct grantee uses to select pass-through grantees and to the subgrantee's work on the federally funded program. Determining the scope and extent to which Title VI applies to your organization as a pass-through grantee similarly depends on the factors discussed above—whether your organization or the direct federal grantee are public or private entities, the funding sources for particular programs and activities, and how the federal funds are used in relation to any private funds within the organizations.

IV. TITLE VI ENFORCEMENT

In addition to issuing the anti-diversity Executive Orders, this Administration has also ramped up Title VI enforcement, including investigation of and litigation against federally funded entities they believe are discriminating against white people, in favor of Black people and other people of color. The Administration also created the Department of Justice Civil Rights Fraud Initiative, through which it investigates federal grantees and contractors and pursues claims under the False Claims Act, a law primarily used to address fraud in government contracts, carrying significant monetary damages and penalties. The government asserts that federal grantees that certify their compliance with federal civil rights laws may violate the False Claims Act because of their diversity, equity, and inclusion practices. In order to prove violation of the False Claims Act, the government must meet a high legal standard: it must prove the recipient of federal funds knew its diversity, equity, and inclusion practices violated civil rights laws, and knew it when the recipient certified its compliance.[13]

If the federal government conducts an investigation and finds a Title VI violation, it can freeze or terminate federal funding, or file a complaint in federal court. Within the current legal framework, if the government finds a private entity in violation of Title VI and wishes to stop or freeze federal funding, it must follow a detailed process set forth in the law. First, the federal agency must give notice of the violation and then give the organization an opportunity to voluntarily comply with Title VI; this can be done through informal negotiation. If there is no resolution that way, an agency can then start a formal hearing process that requires certain findings before terminating or freezing federal financial assistance under Title VI.[14]

However, not all federal agencies are consistently following this well-established legal framework in suspending or terminating grants, and some courts have found they have violated the law when terminating federal grants after findings of discrimination. For instance, the Department of Justice investigated the University of California's response to students' complaints of antisemitism on UCLA's campus, and found the university violated the Equal Protection Clause of the Fourteenth Amendment and Title VI. In the following days, a number of federal agencies terminated or suspended grants to the university. Various affected parties, including unions, filed a lawsuit against the agencies in response. A district court granted the unions' request for a preliminary injunction, finding that the government violated Title VI and IX due process requirements and cancelled research funding "in an arbitrary and capricious manner while ignoring required procedural safeguards."[15]

In addition, as previously mentioned, the Trump Administration has proposed sweeping changes to the government-wide rules governing federal grants, which would give the federal government greater discretion to withhold, suspend, terminate, or change conditions of grants.

V. RISK MITIGATION STRATEGIES DESIGNED TO ADVANCE EQUAL OPPORTUNITY

A federal grantee can mitigate the risk of a Title VI violation in a number of ways, some of which are listed below, while continuing to advance equity for Black communities and other communities of color:

- Even if programming is focused on serving, or centering the needs of, Black communities and communities of color, an organization generally may not limit eligibility or select applicants based on race or national origin. But it may incorporate questions that give the applicant the opportunity to offer relevant information, such as knowledge of relevant communities, lived experiences of relevant communities, and other demonstrated commitment to relevant communities, without violating Title VI, so long as that information is not used as a proxy to discriminate on the basis of race. An organization could include other race-neutral criteria such as eligibility based on geographic area, so long as that information is not used as a proxy to discriminate on the basis of race.

- An organization can ask applicants to self-identify their race or national origin, but for analytical purposes only (e.g., to inform recruitment and outreach), and not for use in selection. A good practice is to keep this information separate from application materials and those making selection decisions.
- If an organization chooses to continue receiving public funds, it can consider keeping federal and state funds separate from other funding sources. In this scenario, the organization could direct public funds to programs or activities that do not involve race-based criteria.

VI. ADDITIONAL RESOURCES

The Lawyers' Committee for Civil Rights Under Law, with other civil rights organizations, has developed fact sheets and additional resources, including resources responsive to guidance that the Administration has released, that could be helpful to nonprofits receiving federal funding:[16]

- *Investing in Racial Equity Through Charitable Grants and Services*, https://www.lawyerscommittee.org/wp-content/uploads/2025/03/LC_Investing-in-Racial-Equity_F-1.pdf.
- *Correcting the Record: College Essays Can and Should Help Schools See the Whole Student*, https://www.lawyerscommittee.org/wp-content/uploads/2025/09/Correcting-the-Record-College-Essays-Can-and-Should-Help-Schools-See-the-Whole-Student.pdf;
- *The Department of Justice's "Guidance for Recipients of Federal Funding on Unlawful Discrimination": What You Need to Know*, https://www.lawyerscommittee.org/wp-content/uploads/2025/08/2-LDF-et-al.-Fact-Sheet-on-AG-Bondi-DEIA-Memo.pdf;
- *Advancing Diversity, Equity, Inclusion, and Accessibility in a Time of Uncertainty: What Employers Need to Know*, https://www.lawyerscommittee.org/wp-content/uploads/2025/11/LDF-et-al.-Post-DOJ-Memo-Employment-Short-Guidance.pdf;
- *The March 26, 2026 Executive Order on Federal Contractors and Diversity, Equity Inclusion, and Accessibility: What You Need to Know*, https://nwlc.org/wp-content/uploads/2026/05/LDF-Et-Al.-Explainer-on-Federal-Contractors-EO.pdf.

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[1] Title VI protections extend to those who are or are perceived because of their shared ancestry or ethnic characteristics to be Jewish, Israeli, Muslim, Arab, Sikh, South Asian, Hindu, Palestinian, or any other faith or ancestry.

[2] This resource focuses only on the Executive Orders implicating racial equity programs. Other Executive Orders specifically affect programs focused on gender, for example.

[3] For instance, *Chicago Women in Trades ("CWIT") v. Trump* challenged the Executive Order that sought to terminate federal funding for all "DEI" and "equity-related" grants without defining those terms. 778 F. Supp. 3d 959 (N.D. Ill. 2025). A federal district court issued a preliminary injunction blocking the Department of Labor from requiring federal grantees nationwide to certify that they do not operate DEI programs as a condition for receiving federal funding, and cancelling a CWIT federal grant. *Id.* at 984-85. The government has appealed the ruling. In *City of Seattle v. Trump*, the city challenged the anti-DEI Executive Orders, and the district court granted a preliminary injunction prohibiting federal agencies from withholding funds from Seattle, finding the Executive Orders likely violated the separation of powers and the Administrative Procedure Act. 808 F. Supp. 3d 1204 (W.D. Wash. 2025). The government has appealed the decision. But in *Nat'l Ass'n of Diversity Officers in Higher Education et al v. Trump et al*, the Fourth Circuit Court of Appeals vacated the district court's preliminary injunction that blocked enforcement of Executive Orders 14173 and 14151, finding that the plaintiffs — universities, advocacy groups, and local governments — were unlikely to succeed on their facial constitutional challenges to provisions in the executive orders concerning termination of federal grants and the requirement to certify the grantee does not violate federal antidiscrimination laws. *Nat'l Ass'n of Diversity Officers in Higher Education et al v. Trump et al*, 167 F.4th 86 (4th Cir. 2026).

[4] *See* Just Security, Litigation Tracker: Legal Challenges to Trump Administration Actions, Diversity, Equity, Inclusion, and Accessibility Section,

https://www.justsecurity.org/107087/tracker-litigation-legal-challenges-trump-administration/.

[5] Regulation for Federal Financial Assistance, 91 F.R. 32198 (May 29, 2026).

[6] To pass strict scrutiny, the entity must prove that the program or policy serves a compelling interest, that it is narrowly tailored, and that the entity is employing the least restrictive means to achieve its compelling interest. Though not discussed here, there are additional frameworks utilized by courts and/or federal agencies to determine when discrimination on the basis of race, color, or national origin has occurred or is occurring under Title VI. These include frameworks for assessing indirect evidence of intentional discrimination, facially neutral policies and practices that impact individuals on the basis of race, color, or national origin, and a hostile environment (i.e., harassment) on the basis of race, color, or national origin.

[7] *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 207 (2023).

[8] For example, the U.S. Department of Transportation's Disadvantaged Business Enterprise (DBE) Program was mandated by Congress and established in 1982. It applies a rebuttable presumption of social or economic disadvantage for members of designated groups, to level the playing field for women and minority-owned businesses seeking government contracts. A court blocked implementation of the program in 2024. *See Mid-America Milling Co. v. U.S. Dep't of Transp.*, No. 3:23-CV-00072-GFVT, 2024 WL 4267183 (E.D. Ky. Sept. 23, 2024). The federal government under the new administration decided not to defend the program and entered into an agreement with the plaintiffs to end the case with an admission that the presumption was unlawful. Minority and women-owned business associations sought to intervene in the case to defend the presumption and the program. When the government changed the program's implementing regulations to substantially revise the program in October 2025, the intervenors moved to dismiss the lawsuit. In March 2026, the court granted the motion to dismiss. *Mid-America Milling Co. v. U.S. Dep't of Transp.*, No. 3:23-CV-00072-GFVT, 2026 WL 777407 (E.D. Ky. Mar. 19, 2026).

[9] The partner that is the recipient of federal funding, however, does have obligations under Title VI. Title VI and its implementing regulations prohibit discrimination by recipients of federal financial assistance "directly or through contractual or other arrangements." 34 C.F.R. § 100.3(b).

[10] *See* 2 C.F.R. § 200.331 (differentiating between subrecipients and contractors).

[11] 42 U.S.C. § 2000d-4a (3)(a)(ii).

[12] For more information on how these terms are defined, *see* Grant Terminology, https://www.grants.gov/learn-grants/grant-terminology#s.

[13] *See* Legal Defense Fund, National Women's Law Center, and Asian Americans Advancing Justice, "Defending Equal Opportunity Programs Against Threats of False Claims Act Liability: What You Need to Know," https://www.naacpldf.org/wp-content/uploads/LDF-NWLC-AAJC-FCA-Explainer-Final.pdf.

[14] 42 U.S.C. § 2000d-1.

[15] *See American Ass'n of Univ. Professors et al. v. Trump et al.*, No. 25-cv-07864-RFL, 2025 WL 3187762 (N.D. Cal. Nov. 14, 2025). The district court granted plaintiff unions' request for preliminary injunction, finding "[t]he undisputed record demonstrates that Defendants have engaged in coercive and retaliatory conduct in violation of the First Amendment and Tenth Amendment. It also shows that they have flouted the requirements of Title VI and IX and cancelled [research] funding [for the University of California system] in an arbitrary and capricious manner while ignoring required procedural safeguards."

[16] *See* also Leadership Conference on Civil and Human Rights, "Trump's Executive Orders on Diversity, Equity, and Inclusion, Explained," https://civilrights.org/resource/anti-deia-eos/; Legal Defense Fund, National Women's Law Center, and Asian Americans Advancing Justice, "Defending Equal Opportunity Programs Against Threats of False Claims Act Liability: What You Need to Know," https://www.naacpldf.org/wp-content/uploads/LDF-NWLC-AAJC-FCA-Explainer-Final.pdf.