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Practice Update

The Department of Justice's Final Rule Eliminates Liability for Disparate Impact Discrimination Under Title VI

January 21, 2026

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On December 10, 2025, the Department of Justice (DOJ) issued a Final Rule rescinding portions of its Title VI regulations to conform more closely with the statutory text and to implement Executive Order 14281. In summary, the DOJ will no longer enforce Title VI regulations against recipients of federal funds for conduct that has an unintentional disparate impact on the basis of race, color, or national origin. Only intentional discrimination is now prohibited. These changes align DOJ regulations with the statutory language of Title VI and Supreme Court decisions (e.g., *Alexander v. Sandoval*, 532 U.S. 275 (2001)), which hold that Title VI prohibits only intentional discrimination. The rule implements Executive Order 14281, which directs federal agencies to eliminate disparate-impact liability to the maximum extent possible.

Key Changes

1. 28 CFR 42.104(b)(2), which previously prohibited recipients from using criteria or methods that have the *effect* of discrimination, has been rescinded.
2. Liability is now limited to actions taken with a *purpose* to discriminate.

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3. 28 CFR 42.104(c)(2), which prohibited employment practices that "tend" to have a discriminatory effect, even if not intentional, was removed completely.

Looking Forward

These policy changes have reduced compliance burdens for federal funding recipients, including colleges and universities, by shifting enforcement under Title VI to focus solely on intentional discrimination. The Final Rule lowers the risk of federal administrative investigations and enforcement actions based only on disparate impact, but does not affect potential exposure under state law or the use of disparate impact evidence to prove intent.

Previously, institutions were required to monitor and analyze the demographic effects of their policies, including admissions, disciplinary actions, and financial aid, to ensure they did not result in unjustified disparate impacts on protected groups. If a policy disproportionately affected a racial or ethnic group, colleges and universities had to justify the policy as necessary and show that no less-discriminatory alternative was available. The DOJ's 2025 Final Rule eliminates these federal requirements. Colleges and universities are no longer obligated to conduct disparate impact analyses or defend neutral policies that result in racial disparities, as federal enforcement now requires proof of intentional discrimination.

Importantly, however, these changes do not eliminate other legal compliance obligations, including those under Title IX and other federal or state laws. Accordingly institutions should continue following all other federal and state laws and internal policies.

Akerman's Higher Education and Collegiate Athletics team is available to provide further guidance on

these changes as needed and will continue to monitor legal developments.
