

Ten State Attorneys General Launch Inquiry into Major Financial Institutions' DEI & ESG Programs

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Takeaways

- A letter from 10 state Attorneys General to 6 major financial services companies signals an increase in state-level scrutiny of DEI and ESG practices.
- The legal requirements are related to discrimination, but DEI practices are more likely to be investigated and subject to enforcement action.
- Although the letter was sent only to six major companies, all financial services companies are on notice of the increased scrutiny.
- An assessment of DEI and ESG practices can help financial services institutions identify and take steps to mitigate risks and ensure legal compliance.

Related link

- [Trump Administration Revokes EO 11246, Prohibits 'Illegal' DEI: What the EO Ending Illegal Discrimination and Restoring Merit-Based Opportunity Means for Employers](#)

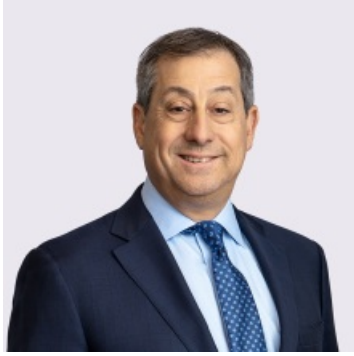
Article

The Attorneys General of ten states have issued a letter challenging the diversity, equity, and inclusion (DEI) and environmental, social, and governance (ESG) programs at six major financial institutions in the United States. The letter, which was later made public, asserts the position of the Attorneys General that these institutions “appear to have embraced race- and sex-based quotas and to have made business and investment decisions based not on maximizing shareholder and asset value, but in the furtherance of political agendas.” In the letter, the Attorneys General claim that the companies appear to have “unlawfully advance[d] discriminatory employment quotas,” “[u]nlawfully pursu[ed] discriminatory board quotas,” “use[d] discriminatory supplier quotas,” and “appear to be violating fiduciary duties and duties of loyalty and prudence,” in potential violation of existing federal and/or state law.

The letter follows President Donald Trump’s flurry of executive orders last week—including the executive order titled “Ending Illegal Discrimination and Restoring Merit-Based Opportunity,”—signaling increased investigation and enforcement activities relating to DEI programs. (You can read our Legal Update on that executive order and related presidential actions [here](#).)

Texas Attorney General Ken Paxton leads the coalition of Attorneys General from ten states—Texas, Alabama, Nebraska, Idaho, South Carolina, Indiana, Utah, Iowa, Virginia and Montana. The letter includes detailed requests for information and specific questions to the financial institutions regarding their DEI and ESG programs and seeks a response within forty-five days. The Attorneys General frame these requests as an

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“opportunity to avoid a lengthy enforcement action,” threatening potential legal action against these institutions to vindicate alleged violations of federal and/or state law.

In light of the letter from the Attorneys General and other challenges to corporate DEI and ESG practices, financial services and other companies are advised to take the following actions:

- Assess current DEI and ESG practices. A review by outside counsel can maximize the protections of the attorney-client and attorney work product privileges.
- Review communications about DEI and ESG programs to focus on the lawful goals of creating equal opportunity in employment and contracting.
- Train executives, managers, and procurement personnel on the institution's commitment to lawful equal opportunities in employment and contracting, and lawful means to achieve those objectives.
- Take steps to reassure the institution's support for all employees, regardless of race or gender, or whether they support the institution's DEI or ESG initiatives.