



July 21, 2025

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2025-01A
ERISA SEC.
404 and 406

Dear Mr. DeMatties:

On September 29, 2023, the Department of Labor provided you with a letter (Advisory Opinion 2023-01A) setting out the Department's views on the application of certain fiduciary responsibility provisions of Title I of the Employee Retirement Income Security Act (ERISA) to Citi's Action for Racial Equity Asset Manager Program (Racial Equity Program). We write to advise you that Advisory Opinion 2023-01A no longer reflects the views of the Department and it has been rescinded.

As described in your letter to us, and outlined in Advisory Opinion 2023-01A, under the Racial Equity Program, Citi pays "all or some" of the investment management fees for "Diverse Managers" if they are retained by Citi's own ERISA covered employer-sponsored benefit plans (the Plans).¹ This provides Diverse Managers with a competitive advantage, allocated on the basis of race.

Advisory Opinion 2023-01A assumed that the Racial Equity Program was lawful and went on to discuss fiduciary issues that follow from that assumption. But the Racial Equity Program is not lawful—its allocation of benefits on the basis of race clearly and unambiguously violates the civil rights laws. 42 U.S.C. § 1981. *See e.g., Am. All. for Equal Rts. v. Fearless Fund Mgmt., LLC*, 103 F.4th 765, 769 (11th Cir. 2024) (affirming grant of preliminary relief because a racially discriminatory diverse supplier program, like the Racial Equity Program, was likely to be held illegal); *Cf. Ending Illegal Discrimination and Restoring Merit-Based Opportunity*, Exec. Order 14173, 90 Fed. Reg. 8633 (Jan. 31, 2025); *Ames v. Ohio Dep't of Youth Servs.*, 605 U.S. ____ (2025) (slip op. at 1–2) (confirming that employment civil rights laws apply equally to all groups whether "majority" or "minority"); *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 143 (2023) ("Eliminating racial discrimination means eliminating all of it."); *Parents Involved in Community Schools v. Seattle School Dist. No. 1*, 551 U.S. 701, 748 (2007) ("The way to stop discrimination on the basis of race is to stop discriminating on the basis of race.").

Citi further claims that its Racial Equity Program may benefit the company because certain stakeholders, such as the general public and its shareholders, might look favorably on it. This is not now, nor has it ever been, a justification for violating the law.

¹ Citi treats investment managers as diverse if they are 50 percent or more minority or women owned.

Citi should take immediate action to end all illegal activity within its Racial Equity Program and any other initiative, plan, program, or scheme it operates under the banner of diversity, equity, and inclusion. ERISA does not shield Citi or the fiduciaries of the Plans from the application of the civil rights laws.

This letter constitutes an advisory opinion under ERISA Procedure 76-1 and is issued subject to the provisions of that procedure, including section 10 thereof relating to the effect of advisory opinions. This letter relates solely to the application of Title I of ERISA and is not determinative of any particular treatment under any other federal or state law.

Sincerely,

Jeffrey J. Turner
Director
Office of Regulations and Interpretations