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Orrick: Texas Attorney General Adds New Certification Requirement Following DEI Opinion

Background

On January 20, 2026, the Texas Attorney General's office issued a letter To All Bond Counsel (ABC Letter) prescribing a new certification requirement for Texas issuers. For all municipal bond transcripts submitted by issuers to the Texas Attorney General for review and approval on or after January 26, 2026, issuers must certify that "bond proceeds will not be used for any unconstitutional purposes, including payments made pursuant to unconstitutional DEI programs and including any such DEI programs established by local ordinances or policies."

The ABC Letter was issued in the wake of Texas Attorney General Opinion No. KP-0505, dated January 19, 2026, which asserts that a broad range of state and local diversity, equity and inclusion (DEI) initiatives, including Historically Underutilized Business (HUB) and Disadvantaged Business Enterprise (DBE) programs, as well as other race and sex-based contracting, subcontracting, procurement, employment, enrollment, appointment, public funding and economic development preferences, are unconstitutional under both the U.S. and Texas Constitutions.

What Does This Mean for Municipal Bonds in Texas?

Continue reading.

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