




U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Washington, D.C. 20507

Office of Inspector General

December 30, 2020

MEMORANDUM

TO: Russell T. Vought
Director
Office of Management and Budget

FROM: Milton A. Mayo Jr. 
Inspector General

SUBJECT: Review of EEOC's Compliance with Executive Order 13950
(OIG Report Number 2021-002-SOIG)

Background

On September 22, 2020, President Donald J. Trump issued Executive Order 13950 (EO or the Order), "*Combating Race and Sex Stereotyping*," which requires federal agencies, federal grantees, federal contractors, and the Uniformed Services to address trainings that include divisive concepts, race or sex stereotyping, and race and sex scapegoating. Section 6(c)(ii) of the Order states that each agency head shall request the agency's Inspector General to thoroughly review and assess by the end of the calendar year, and not less than annually thereafter, agency compliance with the requirements of this Order, in the form of a report submitted to the Office of Management and Budget (OMB). The Chair of the U. S. Equal Employment Opportunity Commission (EEOC) sent the request to the Inspector General on October 25, 2020. This report presents the findings of the Inspector General's review.

Objective

The objective of this review is to assess the Agency's compliance with the requirements of EO 13950 on "*Combating Race and Sex Stereotyping*."

Scope

The scope of the review included internal training offered to Agency employees, external training requested by Agency employees, as well as, training offered to, or requested by external organizations. Criteria used to assess compliance was found in the following documents:

- Executive Order on Combating Race and Sex Stereotyping, September 22, 2020

- OMB M-20-37, Ending Employee Trainings that Use Divisive Propaganda to Undermine the Principle of Fair and Equal Treatment for All, September 28, 2020
- Office of Personnel Management (OPM) Guidance on Mandatory Review of Employee Training under E.O. 13950 September 22, 2020, October 2, 2020

Methodology

To determine compliance, the Office of the Inspector General (OIG) conducted interviews with Agency staff who are responsible for implementing the requirements under the Order and reviewed documentation for completed actions. Fieldwork was conducted between November 17, 2020 and December 3, 2020. This review was performed in compliance with the Council of the Inspectors General on Integrity and Efficiency's Quality Standards for Inspections and Evaluations.

Findings

The OIG's findings of the EEOC's compliance with EO 13950 requirements that are applicable to EEOC are presented below.

Section 4 Requirements (Government Contractors¹): Compliant

We determined that the Agency is compliant with Section 4 of the EO. All government contracts, except for those exempted by Section 204 of EO 11246, shall include specific language that prohibits contractors from using any workplace training that instills in its employees any form of race or sex stereotyping. Section 4 describes eight training concepts that are not permitted. The requirement also includes contractor labor unions, subcontractors, and purchase orders.

The EEOC's Acquisition Services Division (ASD) issued new internal guidance and procedures (ASD-IGP-030), that went into effect November 21, 2020, to implement the EO and provide guidance to acquisition professionals during solicitation preparation, contract award, and the administration of contracts. The guidance states that every contract shall include the prescribed provision of the EO, which prohibits contractors from using workplace training that instills any form of race or sex stereotyping or any form of race and sex scapegoating. The ASD also has an internal review process for contracts that requires the internal reviewer to ensure that the most current clauses are included in each contract.

Section 5 Requirements (Federal Grants): Compliant

We determined that the Agency is compliant with Section 5 of the EO. Federal agencies are required to submit a list of all grant programs requiring certification that the grantee will not use federal government funds to promote concepts prohibited by the Executive Order. EEOC is not a grant-making agency and therefore has no information to report. The Agency's Legal Counsel reported this information to OMB on November 20, 2020, which is within the 60-day requirement of the issuance of the Order.

¹ Section 9 of the E.O. stipulates the requirement includes government contracts entered into 60 days after the date of the E.O., and Section 4 exempts contracts in the manner provided by Section 204 of Executive Order 11246 of September 24, 1965 (Equal Employment Opportunity), as amended.

Section 6 Requirements (Agency Requirements): Compliant

We determined that the Agency is compliant with Section 6 of the EO. The head of each Agency shall issue an order incorporating the requirements of the EO into agency operations, request the Inspector General to conduct a review, and appoint a senior political appointee to ensure compliance.

On October 25, 2020, the Chair designated EEOC's Legal Counsel (a senior political appointee) as the Compliance Official responsible for ensuring compliance with the EO requirements and requested the Inspector General to conduct a review of the Agency's compliance with the EO.

Pursuant to Section 6(c)(i), the Chair issued an internal order, EEOC 150.007, on November 23, 2020, to all Agency personnel via the internal web portal.² The Chair also encouraged EEOC employees to report non-compliance with the internal order or the EO, and directs office heads to do the following to prevent training on, and promotion of, divisive concepts:

- Promptly review their training materials to ensure that they do not teach divisive concepts and that training materials related to diversity and inclusion undergo the required review by OPM before they are used, under the direction of the Compliance Official;
- On an ongoing basis, take any action as may be necessary to ensure, to the greatest extent practicable and permitted by law, that the EEOC's training complies with EO 13950;
- Consult, as needed and under the direction of the Compliance Official, with OPM in carrying out these objectives; and
- Take all appropriate actions to align their public-facing materials with the requirements for training federal employees outlined in EO 13950, pursuant to the OMB Memorandum.

Section 7 Requirements (OMB and OPM Agency Review of Training): Compliant

We determined that the Agency is compliant with Section 7 of the EO. This section requires that all training programs for agency employees relating to diversity or inclusion shall, before being used, be reviewed by OPM for compliance with the requirements of Section 6 of the Order.

EEOC's vendor Skillsoft, provides all course content to Federal Agencies' online learning management systems and has confirmed that they do not publish training on "divisive concepts" or any other form of race or sex stereotyping or race or sex scapegoating. On September 28, 2020 OMB Memorandum M-20-37 issued additional guidance and outlined terms including, but not limited to: critical race theory, white privilege, intersectionality, systemic racism, positionality, racial humility, and unconscious bias. On October 2, 2020, Skillsoft completed their review of

² See <http://inSite.eeoc.gov>.

their online courseware library, deemed “training,” and have identified 11 courses that could potentially be interpreted to fall within the definitions outlined in OMB Memorandum M-20-37.

On October 29, 2020, EEOC’s Office of the Chief Human Capital Officer (OCHCO) suspended employee access to course content in the Agency’s human resources (HR) development and Learning Management Systems (e.g., LMS, and Employee Development Center (EDC) courses, 3rd party sites, eBooks, etc.) to review training not in compliance with the EO. During EEOC’s review, OCHCO suspended and made inaccessible all training not in compliance with the Order.

EEOC’s Office of Field Programs (OFP) identified training sessions across five EEOC district and area offices that could have been non-compliant with the Order. The offices included Charlotte, Chicago, Philadelphia, Phoenix, and Pittsburgh. In addition, the Office of Legal Counsel (OLC) collaborated with OFP to give a presentation during a call with EEOC Outreach and Education Coordinators (OEC) to provide examples of training content that are consistent with the Order. The OECs were instructed to send training content to OLC for review prior to delivery. As of November 19, 2020, OLC has reviewed 23 PowerPoint presentations for compliance with the Order and provided suggestions for revision when necessary.

Section 7(b) is not applicable to EEOC. This section states that an Agency should pursue debarment of any contractors that provide training for agency employees that teaches, advocates, or promotes divisive concepts in violation of contract provisions incorporated as of November 21, 2020. According to ASD, as of December 3, 2020, EEOC has no knowledge of contractors in violation of contract provisions, nor is the Agency entering into any new diversity and inclusion related contracts between November 21, 2020 and the end of the year. As a result, ASD has no plans to pursue debarment of any contractors.

Section 7(c) requests that within 90 days of the date of this order, each agency shall report to OMB all spending in Fiscal Year 2020 on Federal employee training programs relating to diversity or inclusion, whether conducted internally or by contractors. Such report shall, in addition to providing aggregate totals, delineate awards to each individual contractor. The Agency’s Legal Counsel reported this information to OMB on December 21, 2020, which is within the 90-day requirement of the issuance of the Order.

Conclusion

To date, based on the OIG’s review, the Agency is in compliance with all requirements in the Order. If you have any questions, please contact Clarice Williams at 202-663-4375 or Clarice.Williams@eoc.gov.

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