

Message

From: Gean, Lissette - OFCCP [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BBB9A13178C24AADB6B7613F2F9041F3-GEAN, LISSE]
Sent: 10/23/2020 12:39:42 PM
To: Leen, Craig - OFCCP (Leen.Craig@dol.gov) [Leen.Craig@DOL.gov]
CC: Davidson, Patricia J - OFCCP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=881aff8bf6fb4a85ae33921a0cb1596b-Davidson, P]; Williams, Tina T - OFCCP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=de1ca1bb58004746a50104bd40a50623-Williams, T]; Seely, Christopher - OFCCP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6b2b2010aaf743ceb373a758390001a1-Seely, Chri]; Tretheway, Andrea - OFCCP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4bcd1bd011a4f19a909b742d2b454dc-Tretheway,]
Subject: FW: [Action Agency Notification] CTS #20140: OFCCP: Bean, Catherine: Concerns Regarding Executive Order 13950, Combating Race and Sex Stereotyping
Attachments: 20140_CatherineBeane_NonProfitOrgs_re_EO13950_ExecSec_IncomingDoc_10222020_01_41_PM.pdf

Hi Craig,

I'm attaching the incoming correspondence for your information/awareness.

The correspondence was assigned to us, but with no further action or due date included. The instructions are: Do not respond. Letter is addressed to President Trump and is CC to Secretary Scalia and OMB Director Russell Vought.

Thank you,
Lissette

From: [REDACTED] b(6)
Sent: Thursday, October 22, 2020 12:06 PM
Subject: [Action Agency Notification] CTS #20140: OFCCP: Bean, Catherine: Concerns Regarding Executive Order 13950, Combating Race and Sex Stereotyping / COVID-19



The following Correspondence has been assigned to OFCCP as the Action Agency. It will be displayed in the OFCCP **My Work** tab.

Action Agency Notification

CTS # 20140: Concerns Regarding Executive Order 13950, Combating Race and Sex Stereotyping / COVID-19
Correspondence Type: General Correspondence
Action Agency: OFCCP
Correspondence Due Date: N/A
ExecSec Clearance Required: No

Comment:

Please review this Correspondence and draft a response.

The Correspondence will appear on the **Search** tab or you can access it directly through the hyperlink/url below:

Follow this link

Thank you,

DOL CMP Team

b(6)

@dol.gov

This is a system generated message. Please do not reply to this email.

October 21, 2020

President Donald J. Trump
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Dear President Trump:

On behalf of the undersigned charitable organizations, we are writing to express serious concerns about Executive Order 13950, *Combating Race and Sex Stereotyping*, signed on September 22, 2020. Together, the undersigned charitable organizations have a strong commitment to advancing diversity, equity, and inclusion. We urge the Administration to immediately rescind this Executive Order (EO).

The nonprofit sector is the backbone of our communities. Before the pandemic, nonprofits collectively employed more than 12.3 million Americans—more than construction, more than manufacturing. Today, we transform lives in all 50 states across the country. Nonprofit health and human services providers are currently on the frontlines, directly serving people impacted by the COVID-19 global pandemic. Cultural institutions are providing online educational programs for children, teachers, and families. Charitable organizations are lending a critical hand helping with food and housing insecurity as job losses and evictions mount. Together, these organizations are unified in their commitment to providing services that meet the needs of all members of their communities.

Many organizations within the charitable community administer federal contracts and/or grants that stand to be affected by the EO. As such, we are already seeing the chilling effects the EO is having on diversity, equity, and inclusion training at a time when such work is needed more than ever. Among other things, the EO bans the use of certain terms, including “critical race theory,” “white privilege,” “intersectionality,” “systemic racism,” and “unconscious bias” in materials and trainings. Rather than being “divisive concepts,” these are core principles of equity and inclusion developed and confirmed through decades of research and scholarly articles by academics and practitioners that cannot simply be ignored or dismissed.

Additionally, the EO not only raises questions regarding impact and workability across a broad number of contracts and grants administered by various agencies, more importantly, it will upend the progress that organizations have made in advancing racial justice and gender equity work within their organizations, programs, and communities. The EO’s negative ripple effect stands contrary to the mission, goals, and programs of nonprofits and creates our deep concern.

Today our nation is facing intersecting crises of the COVID-19 pandemic, impact from significant natural disasters, and social injustices that are having an acute impact on people of color. It is troubling that the EO would restrict the freedom of private nonprofits with federal grants and contracts from using their own business judgment to provide the workplace training and programs that they understand are necessary to most effectively meet their missions. In fact, it may create circumstances where some nonprofits that provide public services through federal grants and contracts are unable to administer workplace training and community programs. It could also create circumstances where these restrictions deny grants and contracts to these nonprofits on which local, state, and federal governments rely to provide shelter, nutrition, job

training, and other public services. The consequences resulting from the EO are likely to have detrimental effects in communities—an additional reason it should be immediately rescinded.

Finally, the EO continues to inflict deep concern and confusion across the nonprofit sector due to its vague terms, its restrictions on speech, and its already-documented chilling effects on workplace diversity and inclusion efforts. Many organizations have long-standing programs and employee training already in place. The EO imposes unnecessary and unreasonable burdens to make significant and potentially costly changes to these trainings, along with administrative and oversight duties with significant consequences for misinterpreting ambiguous requirements. It also creates the great risk of arbitrary and inconsistent interpretations by various offices within government. This outcome is contrary to the EO's intended purpose and continues to hinder the ability of employers to genuinely foster inclusive workplaces.

As nonprofit organizations committed to equity and justice, we are committed to advancing racial justice within our organizations and in all areas of civic and community life. Given the significant concerns raised by the nonprofit sector and many other industries, we urge you to immediately rescind Executive Order 13950.

Sincerely,

Alliance for Strong Families and
Communities
American Alliance of Museums
American Cancer Society Cancer Action
Network
American Heart Association
American Lung Association
Americans for the Arts
Arts & Democracy
Association of Art Museum Directors
Children's Advocacy Institute
Children's Trust Fund Alliance
Coalition on Human Needs
Communities in Schools, National Office
Council on Foundations
Culture Push, Inc.
Dance/NYC
Dance/USA
Epilepsy Foundation
Eyebeam
Fourth Arts Block
Goodwill Industries International
Independent Sector

League of American Orchestras
Lutheran Services in America
March of Dimes
Mental Health America
More Art
Museum of Contemporary African
Diasporan Art (MoCADA)
National Council of Nonprofits
National Crittenton
National Health Council
Network of Jewish Human Service Agencies
OneHope United
OPERA America
Prevent Child Abuse America
Service Year Alliance
The Arc of the United States
The Field
The National Foundation to End Child
Abuse and Neglect
United Philanthropy Forum
UrbanGlass
Welcoming America
YWCA USA

CC: The Honorable Eugene Scalia, Secretary, United States Department of Labor
The Honorable Russell Vought, Director, White House Office of Management and
Budget

From: Executive Secretariat
To: Schweitzer, Sho - EXECSEC
Cc: Cassidy, Sybil - EXECSEC
Subject: FW: Executive Order 13950
Date: Thursday, October 22, 2020 8:51:45 AM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[EO Letter.Final.Oct2020.pdf](#)

From: Robinson, Caroline H - OSEC <[REDACTED]@dol.gov>
Sent: Thursday, October 22, 2020 8:43 AM
To: Executive Secretariat <[REDACTED]@dol.gov>
Subject: FW: Executive Order 13950

From: Leen, Craig - OFCCP <Leen.Craig@DOL.gov>
Sent: Wednesday, October 21, 2020 7:22 PM
To: Bartley, Catherine - OSEC <Bartley.Catherine@dol.gov>; Robinson, Caroline H - OSEC <[REDACTED]>
Cc: Kilberg, Andrew G - OSEC <Kilberg.Andrew.G@dol.gov>; Swearingen, Brett A - OSEC <swearingen.brett.a@dol.gov>; Squitieri, Chad C - OSEC <squitieri.chad.c@dol.gov>; Taylor, Timothy J - SOL <Taylor.Timothy.J@dol.gov>
Subject: Fwd: Executive Order 13950

FYI, the Secretary is copied on this letter just emailed to me about EO 13950.

Get [Outlook for iOS](#)

From: Catherine Beane <[REDACTED]@ywca.org>
Sent: Wednesday, October 21, 2020 7:09 PM
To: Catherine Beane
Cc: Pamela Yuen
Subject: Executive Order 13950

Please see attached letter regarding Executive Order 13950, sent on behalf of the 41 national nonprofit organizations listed in the letter.

Thank you.

Catherine Beane



Catherine V. Beane, Vice President, Public Policy & Advocacy

T: [REDACTED]
E: [REDACTED]

eliminating racism
empowering women

ywca

YWCA USA

1020 19th Street, NW Suite 750
Washington, DC 20036
www.ywca.org



October 21, 2020

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Americans for the Arts
Arts & Democracy
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Children's Advocacy Institute
Children's Trust Fund Alliance
Coalition on Human Needs
Communities in Schools, National Office
Council on Foundations
Culture Push, Inc.
Dance/NYC
Dance/USA
Epilepsy Foundation
Eyebeam
Fourth Arts Block
Goodwill Industries International
Independent Sector

League of American Orchestras
Lutheran Services in America
March of Dimes
Mental Health America
More Art
Museum of Contemporary African
Diasporan Art (MoCADA)
National Council of Nonprofits
National Crittenton
National Health Council
Network of Jewish Human Service Agencies
OneHope United
OPERA America
Prevent Child Abuse America
Service Year Alliance
The Arc of the United States
The Field
The National Foundation to End Child
Abuse and Neglect
United Philanthropy Forum
UrbanGlass
Welcoming America
YWCA USA

CC: The Honorable Eugene Scalia, Secretary, United States Department of Labor
The Honorable Russell Vought, Director, White House Office of Management and
Budget

Message

From: Williams, Tina T - OFCCP [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=DE1CA1BB58004746A50104BD40A50623-WILLIAMS, T]
Sent: 10/26/2020 5:29:00 PM
To: Leen, Craig - OFCCP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ffd4a5b3cc74f49a5d2bf4c747416d4-Leen, Craig]
CC: Gaglione, Robert J - OFCCP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1488b4650b734927906fed5870ab9642-Gaglione, R]; Davidson, Patricia J - OFCCP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=881aff8bf6fb4a85ae33921a0cb1596b-Davidson, P]
Subject: EO 13950 Hotline/Inquiries Weekly Report
Attachments: Executive Order 13950 Summary Detail Report - 2020-26-10_Redacted.pdf

Craig – here is the weekly report. Policy is attempting to get our Adobe software upgraded to properly redact, so in the interim certain information is just deleted.

Last week (10/19/2020 – 10/23/2020), OFCCP received a total of 34 inquiries;

- 21 named complaints
- 7 anonymous complaints
- 5 requesting compliance assistance
- 1 opposed

Examples of inquiries received this week:

- Complaint – employee required to take diversity and inclusion training that promotes white guilt.
- Complaint – employer continues to promote "Diversity Initiatives" that speak on topics of 'White Privilege', 'White Fragility', 'Black Excellence'.
- Complaint – employees required to take "Critical Race Theory" training; employer hosting large events that are pro-BLM
- Compliance Assistance – requesting information if Executive Order 13950 applies to just actual training of employees, or does it also apply to company sponsored discussions or discussion groups.
- Compliance Assistance – requesting guidance on submitting training materials through the RFI; should they expect that OFCCP will respond to them that their training is okay under the EO or if they need to make changes.

General Bullets of all unique inquiries received this far:

- OFCCP has received a total of 132 unique inquiries on the EO 13950 Hotline.
- Of these 132 inquiries, there are 109 complaints: 70 from named complainants and 39 from anonymous sources reporting information about organizations purported to be in violation of EO 13950.
- 18 of the inquiries are from individuals seeking compliance assistance.
- 5 of the inquiries are written to oppose EO 13950.

Tina Williams | Director

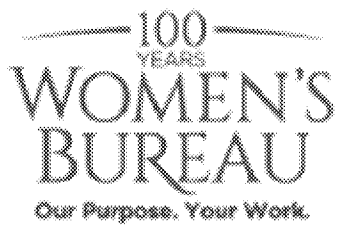
Division of Policy and Program Development

Office of Federal Contract Compliance Programs

200 Constitution Avenue, NW, Room **b(6)** Washington, DC 20210

Direct: **b(6)** Fax: 202-693- 1305

Email: **b(6)** [dol.gov](mailto:b(6)@dol.gov)



All Inquiries for Executive Order 13950
Weekly Report
October 26, 2020

#	Date/Time Opened	Inquiry Category	Industry	Description
1	10/18/2020 8:51 PM	Named Complaints	Academic Institution	<p>I am a concerned [REDACTED] or [REDACTED], having read of the college's program called the Engaged Pluralism Initiative (EPI), which sounds very much like extended "diversity, inclusion and equity" rhetoric. It is a [REDACTED] funded by a grant from [REDACTED] and some [REDACTED] money.</p> <p>When on [REDACTED] myself last year, I asked a couple of [REDACTED]s what they could tell me about this program, but neither of them confessed to knowing much about or having participated. I do not know the details of this program, except what I see on the [REDACTED]s website and in occasional email bulletins about it. It seems very much in line with so much of the current indoctrination that we observe in institutions across the nation.</p> <p>https://engagedpluralism[REDACTED]</p> <p>My sense is that this program warrants investigation, although the verbiage may have recently cleaned up since EO 13950 was issued.</p> <p>[REDACTED]</p>
2	10/18/2020 8:54 PM	Named Complaints	Technology	<p>I was forced to take insulting training that called me a racist. That was earlier this year. So is [REDACTED] continuing with this insulting training after being told to stop? Well, it is indeed still available in the catalog of training classes.</p> <p>MS Word doc "Racist training.docx" attached and pasted into this email.</p> <p>Reference the other email I sent out earlier today.</p> <p>Below is a snapshot taken [REDACTED] on unconscious bias training after 9/22/20 executive order stopping this.</p> <p>It seems that [REDACTED] has not stopped the training as required by Presidential Executive Order and by a memo from the Director of the Office of Management and Budget (Sept. 28).</p> <p>[REDACTED] still offers the courses</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>
3	10/18/2020 8:56 PM	Named Complaints	Technology	<p>Labor Department,</p> <p>I am grateful that President Trump issued an executive order to halt defense contractors from forcing employees to be subjected to company training and indoctrination that tell us that we are racists.</p> <p>I have attached samples of what we were subjected to in an accompanying MS Word document, [REDACTED] propaganda.docx."</p> <p>Here is a snippet that I object to strongly.</p> <p>I hope [REDACTED] has halted this objectionable political propaganda, as directed by President Trump's executive order.</p> <p>You might check to make sure they have halted use of the course, "Unconscious Bias in the Workplace."</p> <p>You might also investigate to see if this "training" material was prepared by people with connections to the [REDACTED] administration.</p> <p>Are former members of the [REDACTED] administration in executive positions in [REDACTED], promoting the Democratic Party agenda with corporate money?</p> <p>I will also mention that [REDACTED] has declared that it has donated signif</p>
4	10/18/2020 8:58 PM	Named Complaints	None	<p>To whom it concerns,</p> <p>I have been hearing reports of our government actually spending our tax dollars on an evil and pernicious ideology: critical race theory. This type of anti-patriot vitriol is NOT appropriate for any forum - including our public schools and our government. I reject any attempts to include this or similar doctrines into our society and certainly into our government.</p> <p>Sincerely,</p> <p>[REDACTED]</p>

**All Inquiries for Executive Order 13950
Weekly Report
October 26, 2020**

#	Date/Time Opened	Inquiry Category	Industry	Description
5	10/18/2020 8:59 PM	Anonymous Complaints	Academic Institution	<p>Forgot to provide the link to the [REDACTED] president's announcement: https://www.[REDACTED]/news/587381</p> <p>Re these rules:</p> <p>1. The contractor shall not use any workplace training that inculcates in its employees any form of race or sex stereotyping or any form of race or sex scapegoating, including the concepts that (a) one race or sex is inherently superior to another race or sex; (b) an individual, by virtue of his or her race or sex, is inherently racist, sexist, or oppressive, whether consciously or unconsciously; (c) an individual should be discriminated against or receive adverse treatment solely or partly because of his or her race or sex; (d) members of one race or sex cannot and should not attempt to treat others without respect to race or sex; (e) an individual's moral character is necessarily determined by his or her race or sex; (f) an individual, by virtue of his or her race or sex, bears responsibility for actions committed in the past by other members of the same race or sex;</p>
6	10/18/2020 9:00 PM	Named Complaints	School District	<p>Hello,</p> <p>I am writing to inform you that just today, October 18th, 2020 in [REDACTED] hired Dr. [REDACTED] to be the [REDACTED] "key note" speaker for a [REDACTED] "training" that was touting the [REDACTED], and attempting to explain how white privilege is to blame for the problems in [REDACTED]. He also said inflammatory things such as "this is not an [REDACTED]"</p> <p>Furthermore it offends me deeply that my state and federal taxes were used as the funds to pay for this speaker to come and insult the character of all [REDACTED] present who believe in the ethical treatment of all [REDACTED] and human beings for that matter, based solely on our will as a good people and not the color of our skin. I am appalled that my (the public's) money was used to insult our integrity and frankly try to force us to feel guilty for who we are when by nature we have given our lives to educate children. We should be teaching ab</p>
7	10/18/2020 9:02 PM	Anonymous Complaints	Retail Beverage	<p>https://www.[REDACTED]/articles/[REDACTED]-11602710707</p> <p>Sent from my T-Mobile 4G LTE Device</p>
8	10/18/2020 9:02 PM	Anonymous Complaints	Hospital	<p>I think [REDACTED] could qualify as a federal contractor, and they are advertising for a voluntary conference that involves potential CRT trainings. They have a website [REDACTED]. I'm not sure if they qualify due to taking medicare. Also this training has already occurred for management within Kaiser</p> <p>Sent from Mail for [REDACTED]</p>
9	10/18/2020 9:03 PM	Named Complaints	School District	<p>Video of the REQUIRED [REDACTED] that took place 10/19/20....</p> <p>Please help us, this is inappropriate and an illegal use of our tax dollars.</p> <p>----- Forwarded Message -----</p> <p>[REDACTED]</p> <p>Sent: Tuesday, October 13, 2020, 05:35:11 PM CDT Subject: [REDACTED]</p> <p>Sent via the [REDACTED] capable smartphone</p>
10	10/18/2020 9:05 PM	Anonymous Complaints	Financial Services	<p>This is my company's latest critical race theory communication. Its [REDACTED] It talks about [REDACTED] learning unconscious bias training. How can I send you the training? Its a series of videos whose content violates the executive order.</p> <p>Thank you</p> <p>From: From the Desk of [REDACTED] Sent: Tuesday, October 13, 2020 Subject: Committing to Inclusion and Diversity through Bold Goals</p> <p>Committing to Inclusion and Diversity through Bold Goals</p> <p>[REDACTED] strives to be the [REDACTED] that people -- all people -- most value and trust. As we have shared over the past few months, [REDACTED] is committed to supporting and promoting diversity, equality and equity, both within the [REDACTED] and in our communities. We want to be clear on the actions we are taking to work toward these aims.</p> <p>In addition to living our Core Values, operating our business ethically and treating employees with respect, we are focused on six bold goals to su</p>
11	10/18/2020 9:06 PM	Named Complaints	School District	<p>Earlier this week, the [REDACTED] in [REDACTED] had a day off for [REDACTED], these are some of the [REDACTED] were taught.</p> <p>In one of the classes, "The [REDACTED] was said to be a social institution that has artificially and historically constructed White Supremacy." This is ludicrous, and would be of great surprise to the [REDACTED] and the [REDACTED]. This also goes against the President's executive order banning critical race theory. Please investigate and put a stop to it.</p> <p>I am [REDACTED]. I am opposed to racism, and agree we can do better in [REDACTED]. But this is anti-religious freedom. And quite frankly nonsense.</p>

**All Inquiries for Executive Order 13950
Weekly Report
October 26, 2020**

#	Date/Time Opened	Inquiry Category	Industry	Description
12	10/18/2020 9:07 PM	Named Complaints	School District	<p>DOL,</p> <p>On October 15, 2020, the [REDACTED] unanimously voted to enter into a contract (http://[REDACTED]f/goto?open&id=BU5J544ACD0E) to inculcate [REDACTED] in bias and racism training in clear violation of Executive Order 13950, issued 9.22.2020.</p> <p>I have attached the scope of work for the contract they [REDACTED] Below is their contact information. (https://[REDACTED]sp?ID2=1000200)</p> <p>[REDACTED]</p> <p>District Name: [REDACTED]</p> <p>[REDACTED]</p>
13	10/21/2020 1:17 PM	Compliance Assistance Request	None	My workplace is recently requiring Diversity & Inclusion training. Do I have the right to decline?
14	10/23/2020 1:17 PM	Named Complaints	Academic Institution	<p>Violation Of EO 13950 By The [REDACTED] Hello,</p> <p>I am writing to submit to the Office of Federal Contract Compliance Programs a formal complaint that the [REDACTED] is in violation of Executive Order 13950. The [REDACTED] receives student loans pursuant to federal [REDACTED] federal research grants.</p> <p>The [REDACTED] published multiple pieces of writing that engage in racial stereotyping and scapegoating. The [REDACTED] has promoted racial stereotyping and scapegoating in their Statement and Resources Regarding Racism and Systemic Oppression in Black Communities. At this URL, https://[REDACTED]-resources-regarding-racism-and-systemic-oppression-in-black-communities/, the official website promotes resources, and what the website describes as "ways to get involved," that openly advocate for</p>
15	10/23/2020 1:23 PM	Anonymous Complaints	Commercial Printing	<p>Executive Order Violations</p> <p>Dear Compliance Officer:</p> <p>[REDACTED] across the U.S. is a federal contractor that performs work for the [REDACTED] other federal agencies is in violation of the Executive Order that prohibits diversity and inclusion training that is rooted in the pernicious and false belief that America is an irredeemably racist and sexist country. Many employees have requested the CEO and executive leadership group to put an end to this training immediately. Our requests have been ignored, and the company has continued this training in knowing violation of the Executive Order.</p> <p>Please put a stop to this training and violation of our rights immediately.</p> <p>Sincerely, [REDACTED]</p>
16	10/23/2020 2:06 PM	Named Complaints	Academic Institution	<p>To Whom It May Concern,</p> <p>I would like to file a complaint with your office regarding a violation of Executive Order 13950. Please see the attached document "DIVERSITY, EQUITY, AND INCLUSION PLAN" by the [REDACTED].</p> <p>I believe the goals in the document violate Executive Order 13950, because it contains language that constitutes race and sex stereotyping. In addition, the document also sets up race quotas for students, faculty, and staff.</p> <p>Please see the contact information of the institutional official below.</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>Thank you.</p> <p>[REDACTED]</p> <p>(Attachment)</p>

All Inquiries for Executive Order 13950
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#	Date/Time Opened	Inquiry Category	Industry	Description
17	10/23/2020 2:09 PM	Named Complaints	Academic Institution	<p>Complaint Regarding Violation of Executive Order 13950</p> <p>Hello,</p> <p>My name is [REDACTED]. I was recently notified of a mandatory diversity, equity, and inclusion training module that is mandated to [REDACTED] (specifically, registration for [REDACTED] put on hold until such training is completed). I fear that part of this training includes violations of Executive Order 13950, specifically referring to the barring of "divisive concepts." There is presumptions associated with this training module that suggest that:</p> <p>"...the United States is fundamentally racist or sexist, (3) an individual, by virtue of his or her race or sex, is inherently racist, sexist, or oppressive, whether consciously or unconsciously..."</p> <p>I write here today in questioning of where [REDACTED] receive [REDACTED] stand in the wake of this new executive order. I have been in preliminary contact with individuals responsible</p>
18	10/23/2020 2:12 PM	Named Complaints	Academic Institution	<p>Unlawful Practices at the [REDACTED]</p> <p>To whom it may concern,</p> <p>I am a [REDACTED], and the [REDACTED] administration has been actively condemning and practicing against the laws set by Executive Order 13950. Since the order was signed, the school has had weekly mandatory trainings for the [REDACTED]. [REDACTED] experiences shared regarding those trainings have revealed that the school is trying to indoctrinate in its faculty and student body that white men are inherently privileged and superior.</p> <p>This past Friday, the [REDACTED] administration sent out a politically charged email, speaking on behalf of the entire college, publicly condemning Executive Order 13950. [REDACTED] have reached out in opposition to the condemnation. One student asked: "By condemning Executive Order 13950, does the [REDACTED] support using federal funds to promote trainings [REDACTED]"</p>
19	10/23/2020 2:26 PM	Anonymous Complaints	Academic Institution	<p>[REDACTED] Racial Stereotyping</p> <p>[REDACTED]</p> <p>[REDACTED] Discourse"</p> <p>12 hours: "The certificate is grounded in a larger concern with social justice issues, ...emphasizing issues of power, privilege and differences."</p> <p>Source: https://[REDACTED]-Communication-Diversity-and-Social-Justice.pdf</p> <p>4) Political Speech [REDACTED] Glossary</p> <p>A guide for politically correct speech, this is [REDACTED] identity politics primer and who's who of the oppressed and their oppressors. Examples: Ableism, ageism, cisgender, heterosexual privilege, white privilege, institutional racism, etc. Jargon and euphemism give cover to radicalism.</p> <p>Source: [REDACTED]</p>
20	10/23/2020 2:28 PM	Named Complaints	Academic Institution	<p>Employer: [REDACTED] promoting "diversity" topics like "White Privilege against Presidential Order</p> <p>Hello,</p> <p>I am an employee at [REDACTED] continues to promote "Diversity Initiatives" that speak on topics of "White Privilege", "White Fragility", "Black Excellence". Rather than focusing on more universal guidelines like: "Doing Unto Others as You'd Have Done" and "Loving Thy Neighbor as Thyself". Here is a recent news article.</p> <p>https://news[REDACTED]ins-others-asking-executive-order-be-rescinded?utm_source=newswire&utm_medium=email&utm_term=635962_HTML&utm_content=10-19-2020-21-22&utm_[REDACTED]</p>
21	10/23/2020 2:37 PM	Named Complaints	Packaged Software	<p>I am reaching out to report several forms of rampant racial and sexist discrimination in hiring at [REDACTED]</p> <p>There are also blatant violations of the Executive Order on Combating Race and Sex Stereotyping; requiring 'diversity and inclusion' training that promotes 'white guilt' and goes so far as to require activism toward specific 'diverse' causes in order to get promoted in the Xbox team.</p> <p>The work environment at [REDACTED] is increasingly becoming more negative toward white males - although Asian and Indian males are also discriminated against in hiring.</p> <p>Here are some of the issues:</p> <ol style="list-style-type: none"> 1. My managers at [REDACTED] within the [REDACTED] - clarified [REDACTED] definition of 'diverse candidates' [REDACTED] 'diverse candidates' as: female, black, Hispanic, or native American. It's very difficult to get this in writing, but it was recently defined by [REDACTED] - in a recorded team meeting. 2. All open positions that are Principal level or above at [REDACTED] V
22	10/23/2020 2:42 PM	Named Complaints	Packaged Software	<p>[REDACTED] has many policies trying to promote what they call diversity that explicitly denies opportunities to white males on the basis of their race and gender. I have been asked to enforce these policies in hiring and promoting and I have witnessed them in action.</p>

**All Inquiries for Executive Order 13950
Weekly Report
October 26, 2020**

#	Date/Time Opened	Inquiry Category	Industry	Description
23	10/23/2020 2:48 PM	Anonymous Complaints	Packaged Software	<p>I WISH TO REMAIN ANONYMOUS OUT OF FEAR OF LOSING MY JOB DURING THE LOCKDOWNS!</p> <p>██████████ is a federal contractor working on some large and very important things for both the gov and the military. ██████████ is still holding huge meetings in the ██████████ organization to talk about "unconscious bias" and "privilege". As outlined in the following executive orders: presidential-actions/executive-order-combating-race-sex-stereotyping briefings-statements/president-trump-fighting-harmful-ideologies-cause-division-federal-workplaces</p> <p>These trainings fall into the category of "Critical Race Theory" and thus constitute a breach of federal contract if allowed to continue.</p> <p>Please at least issue a warning to the company's leadership about this, as they're the ones driving a lot of this by hosting large events that are pro-BLM, and allow all our important whole-org meetings to be coopted by people pushing ideologies that are overtly discriminatory and divisive based on both race and</p>
24	10/23/2020 2:50 PM	Opposes EO 13950	None	<p>Comments on 13950</p> <p>I have great respect for the OFCCP for promoting affirmative action since the 1960s but I'm saddened that your agency has been put in the position of implementing EO13950 which, in many ways, is the antithesis of EO11246. Strong diversity training programs are one way that contractors can implement affirmative action and EO13950 weakens these programs.</p> <p>Although I can write an entire essay, I want to focus on one point: the assertion that some people or groups are "inherently racist or sexist." None of the programs and books that I know of make this claim. Instead, they talk about the differential power of various groups. In our society, whites are the dominant group relative to people of color. That doesn't mean that whites are inherently racist but it does mean that they, as a group, have more power. So whites, as a group, benefit from this racial hierarchy. The solution is to equalize systems of power.</p>
25	10/23/2020 3:21 PM	Compliance Assistance Request	Geospatial Data	<p>EO13950 distorts this and other points, probably intention</p> <p>Good afternoon, Does Executive Order 13950 apply to just actual training of employees, or does it also apply to company sponsored discussions or discussion groups?</p> <p>My company is a federal contractor. I am part of a volunteer group set up by management to discuss Diversity, Inclusion, and Equity. We are paid by the company for the time we use in group discussions. Some of the materials sent to our group to review and serve as "discussion starters" seem very divisive. This is in preparation for our next meeting on Friday, 10/23/2020.</p> <p>This is the web address of the referenced material for discussion: https://www.██████████.ure-characteristics.html</p> <p>I referred the HR representative to Executive Order 13950, "Executive Order Combating Race and Sex Stereotyping,". His response was this: "In regards to the EO, this is not a training, but an optional and volunteer-based engagement activity. In addition, the Department of Labor has given guidance t</p>
26	10/23/2020 3:25 PM	Compliance Assistance Request	Information Technology Services	<p>Is the required posting available for EO 13950? I don't see it on the OFCCP website?</p> <p>██████████</p> <p>██████████ small business.</p>
27	10/23/2020 3:27 PM	Named Complaints	Performing Arts	<p>Discriminatory Training at ██████████ (Org)</p> <p>Hello,</p> <p>I work at ██████████ and was compelled by my manager and colleagues (who were also compelled to pressure others to join) in emails to sign up for a ██████████ by what was previously our marketing consultant agency ██████████</p> <p>This workshop is a thinly veiled one-way conversation on the necessity organizational institution of enforcing ideas promoted by Critical Race Theory and is, I believe, in violation of the recent Executive Order on Combating Race and Sex Stereotyping. I hope someone will review our grants from the National Endowment for the Arts as well as any continuing federal aid we may be receiving.</p> <p>The first obvious mention of this is here: ██████████ in the video, linked directly) and it continues here: https://www.██████████</p> <p>and has persisted through the first of this two-day training session.</p> <p>This is racist, un-American</p>

**All Inquiries for Executive Order 13950
Weekly Report
October 26, 2020**

#	Date/Time Opened	Inquiry Category	Industry	Description
28	10/23/2020 3:29 PM	Named Complaints	Healthcare	<p>COMBAT RACE AND SEX STEREOTYPING BY FEDERAL CONTRACTORS</p> <p>I'm writing to inform you about something [REDACTED] is doing in relation to the topic. I hope you can bring light to this subject as this is un-american and indites all white american's. They are setting up conference call to discuss race and our white privilege. Of course it optional, but if you don't attend we all know it will be held against you and they will terminate you for this reason of some other down the road.</p> <p>[REDACTED] supplies items the federal government and wonder if this could be a way to prevent this ridiculous topic being shoved onto every bodies. Please don't disclose my email or other information as I don't want to lose my job.</p> <p>Here are a few of the links sent out to us for looking over and then discussing.</p> <p>https://www.[REDACTED].are&app=desktop</p> <p>https://gr[REDACTED].SA/m[REDACTED]</p>
29	10/23/2020 3:35 PM	Named Complaints	School District	<p>Critical Race Theory and Social Justice Curriculum in [REDACTED]</p> <p>Good Morning,</p> <p>My name is [REDACTED] I spoke last night during the citizens comments about my concerns with the new curriculum. It was disheartening to see that after I left the meeting, my concerns and the concerns of many other [REDACTED]s were largely dismissed by the board. The reason I came to the [REDACTED] because not only are you the ones responsible for the hiring of all administrative personnel from [REDACTED], but when I raised my concerns with the [REDACTED] at [REDACTED] School I was told that there wasn't anything she could do and then she proceeded to defend the curriculum in question. I have since requested a meeting with [REDACTED] who I believe are the curriculum writers for the [REDACTED] but was only sent an email 3 minutes prior to the time when [REDACTED] said she could call. This is unacceptable. The sheer fact that [REDACTED]</p>
30	10/23/2020 3:38 PM	Named Complaints	Defense Technology	<p>Good Afternoon,</p> <p>While in this instance, it is not mandatory, I believe that some of the courses are mandatory for upper leadership. While I can see where some members are coming from with wanting this to be a standard, it is fairly damaging to "getting the mission accomplished". Please, if you have any questions, feel free to reach out to me.</p> <p>r/s,</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>Greetings Everyone,</p> <p>I have two opportunities coming up for in-person learning (practice social distancing & mask wear) over the next few weeks for the Human Resources Advisor [REDACTED]</p>
31	10/23/2020 4:12 PM	Named Complaints	Construction	<p>To whom it may concern,</p> <p>I am concerned that my company, [REDACTED] is promoting mandatory race training that is harmful and counterproductive to race relations in the United States. I believe this mandatory training, which occurs monthly, is in violation of Executive Order 13958.</p> <p>I've attached a sample of one of trainings as an example of the rhetoric used. Upon request I can supply the full training(s) to provide further Ed context. I believe this training promotes divisiveness and that the United States is fundamentally racist and sexist.</p> <p>I look forward to hearing back as to any next steps or educational material that may help in this endeavor.</p> <p>Thank You,</p> <p>[REDACTED]</p> <p>(Attachment)</p>

**All Inquiries for Executive Order 13950
Weekly Report
October 26, 2020**

#	Date/Time Opened	Inquiry Category	Industry	Description
32	10/23/2020 4:15 PM	Named Complaints	Defense Technology	<p>The [redacted] group, a company [redacted] group, often sends out and posts training to show how inferior certain races are and to show validity to the employees on their self described Myths as it relates to race superiority and inferiority.</p> <p>Todays email invites employees to call in to be told about The model Minority Myth, among other topics now banned by such a Federal Contractor as [redacted]</p> <p>Just the headline from the official corporate email Please join Professional [redacted] and [redacted] to [redacted] for their next [redacted] Up session. This months session focused on the Model Minority Myth. [redacted] and [redacted] welcome anyone to join and share stories, learn from others, and brainstorm actions to address the impacts of this myth.</p> <p>For more relevant information WHEN Thursday, [redacted], ET 9 10 am PT</p> <p>WHO Everyone is Welcome [redacted] Employees, Leaders WHERE Virtual via Zoom Join Meeting</p> <p>Link remo</p>
33	10/23/2020 4:19 PM	Compliance Assistance Request	None	<p>i understand that up until recently the federal govt was requiring all contractors of federal contracts to bring in an employee and lecture to the employees how the white race was all racists. i find such horrible discrimination to be offensive, obscene and completely out of order.</p> <p>i understand that that regulation has now been changed. th edamage done to the white race from that federal regulation put into action unde [redacted] is offensive to all and has only recently come into public view. it has totally damaged relations between the races and payments shoudl be made to employees who were hurt by this out of order bullying discriminatory action by the federal govt, particularly [redacted] the public had no idea this was taking place as it was very secretive. damages need tobe paid to employees who were hurt from this totally racist action by the federal govt and it certainly needs to be stopped and banned forever. i find such actions obscene to the maximum. this comment is for</p>
34	10/23/2020 4:47 PM	Compliance Assistance Request	Law Firm	<p>Ms. [redacted], she was a part the audience with [redacted]. This a question to be passed on per [redacted] who has directed all question from his meeting this morning are to be given to [redacted]. if a contractor submit training materials through the RFI should they expect that OFCCP will respond to them that their training is okay under the EO or if they need to make changes [redacted] trying to understand, that if the information that is submitted will there be a confirmation whether or not that they are in compliance. Or if OFCCP will confirm that their training materials are not okay will OFCCP. What to expect.... [redacted] address is [redacted]</p> <p>Thank you.</p> <p>[redacted]</p>

Message

From: Gean, Lissette - OFCCP [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BBB9A13178C24AADB6B7613F2F9041F3-GEAN, LISSE]
Sent: 10/27/2020 2:23:41 PM
To: Leen, Craig - OFCCP (Leen.Craig@dol.gov) [Leen.Craig@DOL.gov]
CC: Gaglione, Robert J - OFCCP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1488b4650b734927906fed5870ab9642-Gaglione, R]; Davidson, Patricia J - OFCCP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=881aff8bf6fb4a85ae33921a0cb1596b-Davidson, P]; Williams, Tina T - OFCCP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=de1ca1bb58004746a50104bd40a50623-Williams, T]
Subject: NILG Questions re EO 13950
Attachments: NILGQuestions_reEO13950.docx

Attached are the questions Vicki was referring to.

Thanks,
L

Lissette Geán
Chief of Staff
Office of Federal Contract Compliance Programs
@dol.gov



NILG Questions on EO 13950

Applicability

Does EO13950 apply to a federal contractor (all portions of the business/all locations), or would it only pertain to our portion of the business that has DOD/military contracts with the federal govt?

Does the prohibition on training to employees of topics that the EO labels as "divisive concepts" apply to trainings to all employees of the contractor or only to those employees who are employed under the federal grant or contract?

Will this EO apply to commercial contracts because of Medicare/Medicaid?

Would federal contractors not need to comply with EO UNTIL a new federal contract is signed that includes the new clause, even if after November 21, 2020?

What is the applicability of this EO to public institutions of higher education, and will it apply to the entire institution if only one department has a federal contract. Can we parse out department by department?

Enforcement

What prevents the agency from taking a more aggressive approach in rooting out concepts the agency finds problematic? In light of OMB Memo M-20-37 that lists a variety of terms that maybe part of many trainings and how that memo may signal the government's approach, how do we know that OFCCP will conduct a more limited review of training rather than attempting to root out anything that may be deemed offensive to anyone?

Has the term "scapegoating" appeared in any prior legislation? Any precedent for how that plays out?

Isn't a lot of this objective and would allow for frivolous accusations by people who feel accused, but are not directly treated negatively/adversely?

If an employee submits an offensive training deck to OFCCP for evaluation, will OFCCP expect each district office to evaluate contractors' training programs under the EO, or will this be handled by national office staff?

How are they defining harassment? It doesn't sound like 1 class would be severe or pervasive.

AAAED points out that the EO timeline runs the risk of violating the requirements of the Administrative Procedure Act and the Paperwork Reduction Act, which require notice and comment before applicable rules are implemented.

NILG Questions on EO 13950

If training was provided in August, before the new EO was issued, is there a potential violation? Usually, regs are not retroactive.

Does the RFI include any materials used in the past or only materials visible/available to employees or used in training since EO 13950 was passed?

Will the OFCCP be requiring ALL contractors to provide our training curriculum materials? When?

So can we continue training as is until November 21?

Is there any way to prevent complaints where the training is balanced and does not violate the guidelines? It could be that an employee may complain against any unconscious bias training, regardless of whether it runs afoul of this order and this could have a chilling effect on employers that seek to train its employees

We can't control how people feel-- how will this impact the reporting line?

Wouldn't the first action of the OFCCP be to contact you if they thought there might be noncompliance? Seems to me the process could take 60 days and you would have plenty of time to remedy before any disciplinary action could be taken.

Will regulations address what contracts or subcontracts are exempt from the Order? Will there be a FAR clause?

What are the penalties for non-compliance?

How will the OFCCP enforce and investigate complaints?

Will the OFCCP ask for training materials during a compliance evaluation for purposes of investigating compliance with EO 13950?

Please explain the areas of overlap between EO 11246 and EO 13950 from a legal perspective.

What is the Statute of Limitations for claims under EO 13950?

Notice

What are the dates required for posting and union notification?

There was no language for PO's or for the notices provided. Contractors should NOT make up their own language for these, correct???

The E.O. appears to say that the Notice requirement is applicable to unions. Where does the E.O. state non-union federal contractors are required to provide notice??

NILG Questions on EO 13950

If I understand correctly--unless and until the agency contracting officer provides the notice, there is no requirement to provide any information to employees?

Contracts

How should banks/financial institutions interpret applicability to this EO given their federal contractor status is presumed due to FDIC insurance? Is it assumed that FDIC "contract" is renewed annually and thus this would apply? Or is it perpetual and exempts banks from the November date making it applicable?

When we talk about "contracts" and applicability, how does this apply to Banks (FDIC insured) who are covered contractors based on that FDIC coverage?

I assume that on Nov. 21 all banks are considered renewed automatically.

Financial Institutions are considered a government contractor because we serve as a depository of federal government funds and issue or redeem US savings bonds. We don't have any "federal contracts" so are we still required to post the notice and follow all?

With regard to new contracts on or after 11/21/20, does "new contracts" include Statements of Work that become part of an evergreen Master Services Agreement?

Is it expected that the provisions will show up through a FAR clause provided to procurement departments either through amendments, modifications or new contracts?

Training

What is the definition of "workplace training" and how does it apply outside of formal employer sponsored training, if at all?

Does "the contractor" extend to programs put on by ERGs where employees are sharing their personal perspectives rather than a company position on the topic? What if the company or the ERG brings in an external speaker sharing their perspective?

Would ERG programming be included in the prohibited inculcation?

Does this mean that inherent bias training is no longer allowed?

Is the mere mention of a topic like white or male privilege an "inculcation"? Where is the line?

Does it make a difference if the program is a voluntary offering rather than required training?

What is someone feels discomfort or anguish because of "perceived" racism?

NILG Questions on EO 13950

Does this apply to federal contractors who allow posted material about external webinars that teach the objectionable training?

Does this order mean that unconscious bias training should not be conducted, even if balanced and avoiding "divisive, anti-American propaganda?"

Does "training" cross over to conversations on race, external speakers, etc. that are not deemed training?

Would sharing labor market availability information be a violation of the EO (according to item d on the "divisive concepts" slide)?

So workshops with discussions would not apply?

Define "academic"?

How do you define "academic course of instruction?"

Are workshops, speakers, etc. brought in by ERGs considered to be "training" or inculcation?

Does this order mean that the concept of white privilege is to not be addressed during any diversity and inclusion trainings for federal contractors?

Do microaggressions trainings fall in violation of the EO?

What about "required" training and training opportunities which are voluntary and not required?

If an EE refuses to attend Diversity & Inclusion training they find objectionable because of divisive content, is the Employer within their rights to direct the EE to attend the training; otherwise there may be an issue of insubordination. Also, is there any NLRA implication??

Is it a matter of just staying away from discussing privilege and talking about diversity and inclusion in general terms? It sounds like we can do that as long as we're not vilifying a race or group.

Is it the endorsement of these topics or just the talking about these ideas?

Is white privilege a topic that can be discussed?

So much vagueness--if we discuss how bias can impact recruitment efforts--is that inculcating or raising awareness?

What are the distinction between formal trainings that are required v. trainings that are not required but sanctioned or encouraged by the company?

NILG Questions on EO 13950

What is the relationship to this EO and academic freedom?

Academic instruction was referenced, which would be instruction to students, not employees. Therefore, would the academic instruction section not apply ("as long as done objectively and without endorsement") since it is not employee/workplace training?

Thoughts on upstander/bystander trainings that provide working examples. Such as a man talking over a woman in a meeting and how an upstander could respond.

Would it be inappropriate if a trainer discussed any research findings that relates to the divisive concepts?

Can the OFCCP provide examples of what is permissible and not permissible for each of the divisive concepts?

Message

From: Gean, Lissette - OFCCP [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BBB9A13178C24AADB6B7613F2F9041F3-GEAN, LISSE]
Sent: 10/26/2020 12:30:45 PM
To: Myers, Vanessa J - SOL [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=12c18ecc273f49cab7f54ea9e257c898-Myers, Vane]
CC: Tretheway, Andrea - OFCCP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4bcd1bd011a4f19a909b742d2b454dc-Tretheway,]
Subject: FW: NPR interview request/ Executive Order on Combating Race and Sex Stereotyping - ACTION: Review & Clear
Attachments: OPASpeakingRequestForm_OFCCP_Oct2020_NPRInterview_reEO13950_10282020.pdf
Importance: High

Hi Vanessa,

NPR is requesting to interview Craig regarding Executive Order 13950.

Please review the attached form and the email below regarding the interview and let us know if you clear the interview with Craig.

If you clear it, please sign and return to us the OPA Speaking Engagement Request form that is attached.

Thank you,
Lissette

From: Leen, Craig - OFCCP <Leen.Craig@DOL.gov>
Sent: Monday, October 26, 2020 12:21 PM
To: Nieves, Edwin - OPA <[b(6)]@DOL.gov>; Gean, Lissette - OFCCP <[b(6)]@dol.gov>
Cc: Smith, Kelley - OFCCP <[b(6)]@dol.gov>; Gamble, Bennett B - OPA <[b(6)]@dol.gov>; Williams, Tina T - OFCCP <[b(6)]@dol.gov>; Seely, Christopher - OFCCP <[b(6)]@dol.gov>
Subject: Re: NPR interview request/ Executive Order on Combating Race and Sex Stereotyping

I would welcome the opportunity to be interviewed, as I know the White House and OSEC want me to be doing as much positive outreach as possible on the new EO.

In answer to the question, please let them know we've received approximately 100 inquiries to the hotline as of the end of last week, comprised of potentially actionable complaints, comments, compliance assistance requests, and anonymously provided information. We are handling any potentially actionable complaints consistent with our standard operating procedures in our compliance manual.

I'm copying Tina and Chris from OFCCP Policy who can provide more information.

Get Outlook for iOS

From: Nieves, Edwin - OPA <[b(6)]@DOL.gov>
Sent: Monday, October 26, 2020 12:13:38 PM
To: Gean, Lissette - OFCCP <[b(6)]@dol.gov>; Leen, Craig - OFCCP <Leen.Craig@DOL.gov>
Cc: Smith, Kelley - OFCCP <[b(6)]@dol.gov>; Gamble, Bennett B - OPA <[b(6)]@dol.gov>
Subject: FW: NPR interview request/ Executive Order on Combating Race and Sex Stereotyping

Good morning.

Please see the below request from NPR for an interview and additional information in regards to EO 13950.

I've already sent the reporter our latest press release on the EO.

Let me know if you'd like to propose a response and if you'd like to request authorization for an interview.

Thanks,

Edwin Nieves
Office of Public Affairs
U.S. Department of Labor
Washington, D.C.

202 [b(6)]
[b(6)]@dol.gov

From: Melissa Block <MBlock@npr.org>

Sent: Monday, October 26, 2020 12:01 PM

To: Nieves, Edwin - OPA [b(6)]@dol.gov>; Gamble, Bennett B - OPA [b(6)]@dol.gov>

Subject: NPR interview request/ Executive Order on Combating Race and Sex Stereotyping

Importance: High

CAUTION - The sender of this message is external to the DOL network. Please use care when clicking on links and responding with sensitive information. Send suspicious email to spam@dol.gov.


Hello Mr. Nieves and Mr. Gamble,

I'm working on a story about the President's recent Executive Order (#13950) on race and sex stereotyping in training programs.

I'm writing to request an interview with OFCCP director Craig Leen about the implementation of the order. In addition, I'm seeking more information about the email and telephone hotline that OFCCP has established: in particular, how many complaints have been received to date, and what the status is of any investigation or enforcement.

Can you let me know what's possible? I'm on a tight deadline this week, and appreciate your help.

Many thanks,
Melissa Block

 Melissa Block | special correspondent | NPR | [b(6)]@npr.org | 1111 North Capitol St. NE, Washington, DC 20002 | P 202 [b(6)] | @nprmelissablock

**SPEAKING REQUEST FORM**

Authorization for U.S. Department of Labor Employees to participate in speaking engagements is determined by the Office of Public Affairs, in coordination with relevant DOL departments.

Speaking engagements include, but are not limited to: summits, webinars, conferences, conventions, testimony before state legislatures, press conferences, and any event with an external audience. Questions about whether an event requires authorization should be directed to the Office of Public Affairs.

Prior to accepting an invitation to represent the Department in a speaking capacity, it is necessary to complete this request form and secure approval. To best assess the speaking opportunity, supporting documents – such as an invitation and proposed agenda – should be included with this request.

.....
PLEASE COMPLETE THIS FORM IN ITS ENTIRITY

Agency Head Approval _____

SOL Ethics (Office of Legal Counsel) Approval _____

Event Date: 10/28/20

Event Location: Virtual

Hosting Organization: National Public Radio

Event: Interview on Executive Order 13950 on Combating Race and Sex Stereotyping

Topic: Executive Order 13950 on Combating Race and Sex Stereotyping

DOL Division: OFCCP

Proposed DOL Speaker: OFCCP Director Craig E. Leen

Role (keynote, panelist, etc.): Interviewee

Speech length: 60 minutes

Audience: Public

Will there be questions and answers? Yes



Is the event open to members of the press? Yes

Describe how the participation of a DOL speaker advances the Department's broader mission: This is an opportunity for OFCCP to engage those representing the contr

Do you plan to distribute printed materials or present PowerPoint slides? No

Key DOL messages to convey (use three to five bullets):

- OFCCP is dedicated to expanding equal employment opportunities and eliminating discrimination in the workplace, through compliance assistance and enforcement.
- Four Goals:
 1. Transparency and Compliance Assistance: Be more transparent and encourage and facilitate proactive compliance in advance of enforcement, benefitting American workers
 2. More Certainty and More Interactive: Improve the relationship between OFCCP and stakeholders, less adversarial and more collaborative when it is appropriate.
 3. Greater Efficiency: Make compliance evaluations more transparent, and less time-consuming and burdensome.
 4. Recognition: Recognize high performing contractors as mentors to their peers and contribute to changing their behavior for the long term.

Message

From: Williams, Tina T - OFCCP [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=DE1CA1BB58004746A50104BD40A50623-WILLIAMS, T]
Sent: 10/26/2020 2:00:17 PM
To: Seely, Christopher - OFCCP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6b2b2010aaf743ceb373a758390001a1-Seely, Chri]
Subject: FW: NPR interview request/ Executive Order on Combating Race and Sex Stereotyping

Ask Theresa for the # of inquiries.

From: Nieves, Edwin - OPA [b(6)] <[b(6)]@DOL.gov>
Sent: Monday, October 26, 2020 1:53 PM
To: Leen, Craig - OFCCP <Leen.Craig@DOL.gov>; Gean, Lissette - OFCCP [b(6)] <[b(6)]@dol.gov>; Williams, Tina T - OFCCP [b(6)] <[b(6)]@dol.gov>; Gamble, Bennett B [b(6)] <[b(6)]@dol.gov>; Seely, Christopher - OFCCP [b(6)] <[b(6)]@dol.gov>
Subject: RE: NPR interview request/ Executive Order on Combating Race and Sex Stereotyping

Thank you.

Tina and Chris, is there anything else that should be added before I send this up for review/approval?

-Edwin

From: Leen, Craig - OFCCP <Leen.Craig@DOL.gov>
Sent: Monday, October 26, 2020 12:21 PM
To: Nieves, Edwin - OPA [b(6)] <[b(6)]@DOL.gov>; Gean, Lissette - OFCCP [b(6)] <[b(6)]@dol.gov>; Williams, Tina T - OFCCP [b(6)] <[b(6)]@dol.gov>; Gamble, Bennett B [b(6)] <[b(6)]@dol.gov>; Seely, Christopher - OFCCP [b(6)] <[b(6)]@dol.gov>
Subject: Re: NPR interview request/ Executive Order on Combating Race and Sex Stereotyping

I would welcome the opportunity to be interviewed, as I know the White House and OSEC want me to be doing as much positive outreach as possible on the new EO.

In answer to the question, please let them know we've received approximately 100 inquiries to the hotline as of the end of last week, comprised of potentially actionable complaints, comments, compliance assistance requests, and anonymously provided information. We are handling any potentially actionable complaints consistent with our standard operating procedures in our compliance manual.

I'm copying Tina and Chris from OFCCP Policy who can provide more information.

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From: Nieves, Edwin - OPA [b(6)] <[b(6)]@DOL.gov>
Sent: Monday, October 26, 2020 12:13:38 PM
To: Gean, Lissette - OFCCP [b(6)] <[b(6)]@dol.gov>; Leen, Craig - OFCCP <Leen.Craig@DOL.gov>
Cc: Smith, Kelley - OFCCP [b(6)] <[b(6)]@dol.gov>; Gamble, Bennett B - OPA [b(6)] <[b(6)]@dol.gov>
Subject: FW: NPR interview request/ Executive Order on Combating Race and Sex Stereotyping

Good morning.

Please see the below request from NPR for an interview and additional information in regards to EO 13950.

DOL012387

I've already sent the reporter our latest press release on the EO.

Let me know if you'd like to propose a response and if you'd like to request authorization for an interview.

Thanks,

Edwin Nieves
Office of Public Affairs
U.S. Department of Labor
Washington, D.C.

b(6)

@dol.gov

From: Melissa Block <MBlock@npr.org>

Sent: Monday, October 26, 2020 12:01 PM

To: Nieves, Edwin - OPA <**b(6)**@dol.gov>; Gamble, Bennett B - OPA <**b(6)**@dol.gov>

Subject: NPR interview request/ Executive Order on Combating Race and Sex Stereotyping

Importance: High

CAUTION - The sender of this message is external to the DOL network. Please use care when clicking on links and responding with sensitive information. Send suspicious email to spam@dol.gov.


Hello Mr. Nieves and Mr. Gamble,

I'm working on a story about the President's recent Executive Order (#13950) on race and sex stereotyping in training programs.

I'm writing to request an interview with OFCCP director Craig Leen about the implementation of the order. In addition, I'm seeking more information about the email and telephone hotline that OFCCP has established: in particular, how many complaints have been received to date, and what the status is of any investigation or enforcement.

Can you let me know what's possible? I'm on a tight deadline this week, and appreciate your help.

Many thanks,
Melissa Block

 Melissa Block | special correspondent | NPR **b(6)**@npr.org | 1111 North Capitol St. NE, Washington, DC 20002 | P 202 **b(6)**

Message

From: Williams, Tina T - OFCCP [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=DE1CA1BB58004746A50104BD40A50623-WILLIAMS, T]
Sent: 10/26/2020 2:08:52 PM
To: Seely, Christopher - OFCCP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6b2b2010aaf743ceb373a758390001a1-Seely, Chri]; Nieves, Edwin - OPA [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9f3db74d1321490e971fb2bd7cb88205-Nieves, Edw]; Leen, Craig - OFCCP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ffd4a5b3cc74f49a5d2bf4c747416d4-Leen, Craig]; Gean, Lissette - OFCCP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bbb9a13178c24aadb6b7613f2f9041f3-Gean, Lisse]
CC: Smith, Kelley - OFCCP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0cea2c4e5e114c0daafc5aabb237c96a-Smith, Kell]; Gamble, Bennett B - OPA [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=97bd7645666947ffa4fdf78ffe13b871-Gamble, Ben]
Subject: RE: NPR interview request/ Executive Order on Combating Race and Sex Stereotyping

Edwin – there is no additional information to provide. Thanks. Tina

From: Seely, Christopher - OFCCP [b(6)]@dol.gov>
Sent: Monday, October 26, 2020 2:04 PM
To: Williams, Tina T - OFCCP [b(6)]@dol.gov>; Nieves, Edwin - OPA [b(6)]@DOL.gov>; Leen, Craig - OFCCP <Leen.Craig@DOL.gov>; Gean, Lissette - OFCCP [b(6)]@dol.gov>
Cc: Smith, Kelley - OFCCP [b(6)]@dol.gov>; Gamble, Bennett B - OPA [b(6)]@dol.gov>
Subject: RE: NPR interview request/ Executive Order on Combating Race and Sex Stereotyping

Information as of today.

General Bullets of all unique inquiries received this far:

- OFCCP has received a total of 132 unique inquiries on the EO 13950 Hotline.
- Of these 132 inquiries, there are 109 complaints: 70 from named complainants and 39 from anonymous sources reporting information about organizations purported to be in violation of EO 13950.
- 18 of the inquiries are from individuals seeking compliance assistance.
- 5 of the inquiries are written to oppose EO 13950.

Thanks,

Chris Seely

202- [b(6)]

From: Williams, Tina T - OFCCP [b(6)]@dol.gov>
Sent: Monday, October 26, 2020 11:00 AM
To: Nieves, Edwin - OPA [b(6)]@DOL.gov>; Leen, Craig - OFCCP <Leen.Craig@DOL.gov>; Gean, Lissette - OFCCP [b(6)]@dol.gov>
Cc: Smith, Kelley - OFCCP [b(6)]@dol.gov>; Gamble, Bennett B - OPA [b(6)]@dol.gov>; Seely, Christopher - OFCCP [b(6)]@dol.gov>
Subject: RE: NPR interview request/ Executive Order on Combating Race and Sex Stereotyping

We're checking the # of inquiries.

From: Nieves, Edwin - OPA [b(6)]@DOL.gov>
Sent: Monday, October 26, 2020 1:53 PM
To: Leen, Craig - OFCCP <Leen.Craig@DOL.gov>; Gean, Lissette - OFCCP <[b(6)]@dol.gov>; Williams, Tina T - OFCCP <[b(6)]@dol.gov>; Gamble, Bennett B - [b(6)]@dol.gov>; Seely, Christopher - OFCCP <[b(6)]@dol.gov>
Cc: Smith, Kelle [b(6)]@dol.gov>; Williams, Tina T - OFCCP <[b(6)]@dol.gov>; Gamble, Bennett B - [b(6)]@dol.gov>; Seely, Christopher - OFCCP <[b(6)]@dol.gov>
Subject: RE: NPR interview request/ Executive Order on Combating Race and Sex Stereotyping

Thank you.

Tina and Chris, is there anything else that should be added before I send this up for review/approval?

-Edwin

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Sent: Monday, October 26, 2020 12:21 PM
To: Nieves, Edwin [b(6)]@DOL.gov>; Gean, Lissette - OFCCP [b(6)]@dol.gov>; Williams, Tina T - OFCCP <[b(6)]@dol.gov>; Gamble, Bennett B - [b(6)]@dol.gov>; Seely, Christopher - OFCCP <[b(6)]@dol.gov>
Cc: Smith, Kelley [b(6)]@dol.gov>; Williams, Tina T - OFCCP <[b(6)]@dol.gov>; Gamble, Bennett B - [b(6)]@dol.gov>; Seely, Christopher - OFCCP <[b(6)]@dol.gov>
Subject: Re: NPR interview request/ Executive Order on Combating Race and sex stereotyping

I would welcome the opportunity to be interviewed, as I know the White House and OSEC want me to be doing as much positive outreach as possible on the new EO.

In answer to the question, please let them know we've received approximately 100 inquiries to the hotline as of the end of last week, comprised of potentially actionable complaints, comments, compliance assistance requests, and anonymously provided information. We are handling any potentially actionable complaints consistent with our standard operating procedures in our compliance manual.

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Cc: Smith, Kelley - OFCCP [b(6)]@dol.gov>; Williams, Tina T - OFCCP <[b(6)]@dol.gov>; Gamble, Bennett B - [b(6)]@dol.gov>
Subject: FW: NPR interview request/ Executive Order on Combating Race and Sex Stereotyping

Good morning.

Please see the below request from NPR for an interview and additional information in regards to EO 13950.

I've already sent the reporter our latest press release on the EO.

Let me know if you'd like to propose a response and if you'd like to request authorization for an interview.

Thanks,

Edwin Nieves
Office of Public Affairs

DOL012390

U.S. Department of Labor
Washington, D.C.

b(6)

dol.gov

From: Melissa Block <MBlock@npr.org>

Sent: Monday, October 26, 2020 12:01 PM

To: Nieves, Edwin - OPA **b(6)** DOL.gov>; Gamble, Bennett B - OPA **b(6)** [dol.gov](mailto:DOL.gov)>

Subject: NPR interview request/ Executive Order on Combating Race and Sex Stereotyping

Importance: High

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Hello Mr. Nieves and Mr. Gamble,

I'm working on a story about the President's recent Executive Order (#13950) on race and sex stereotyping in training programs.

I'm writing to request an interview with OFCCP director Craig Leen about the implementation of the order. In addition, I'm seeking more information about the email and telephone hotline that OFCCP has established: in particular, how many complaints have been received to date, and what the status is of any investigation or enforcement.

Can you let me know what's possible? I'm on a tight deadline this week, and appreciate your help.

Many thanks,
Melissa Block

 Melissa Block | special correspondent | NPR **b(6)** npr.org | 1111 North Capitol St. NE, Washington, DC 20002 | P 202 **b(6)** @nprmelissablock

DOL012391

Message

From: Gean, Lissette - OFCCP [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BBB9A13178C24AADB6B7613F2F9041F3-GEAN, LISSE]
Sent: 10/29/2020 9:29:26 AM
To: Nieves, Edwin - OPA [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9f3db74d1321490e971fb2bd7cb88205-Nieves, Edw]
CC: Smith, Kelley - OFCCP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0cea2c4e5e114c0daafc5aabb237c96a-Smith, Kell]
Subject: RE: NPR interview request/Executive Order on Combating Race and Sex Stereotyping

Hi Edwin,

We have 142 inquiries as of 8:00 am today.

Thank you,
Lissette

From: Nieves, Edwin - OPA <b(6)@DOL.gov>
Sent: Wednesday, October 28, 2020 9:07 AM
To: Gean, Lissette - OFCCP <b(6)@dol.gov>
Cc: Smith, Kelley - OFCCP <b(6)@dol.gov>
Subject: FW: NPR interview request/ Executive Order on Combating Race and Sex Stereotyping

Lissette,
Please see the reporters updated numbers request below.
Can you have updated numbers tomorrow morning?
Thanks,
Edwin

From: Melissa Block <MBlock@npr.org>
Sent: Wednesday, October 28, 2020 8:56 AM
To: Nieves, Edwin - OPA <b(6)@DOL.gov>
Subject: Re: NPR interview request/ Executive Order on Combating Race and Sex Stereotyping

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Thank you, Edwin. I'll be filing my story tomorrow, so will check back then for an updated number of hotline inquiries. Think you'll have a new tally by then?

All best,
Melissa

Melissa Block
Special Correspondent
NPR
+1-202-412-6454
mblock@npr.org
Twitter: @nprmelissablock

Sent from my iPhone

On Oct 28, 2020, at 8:47 AM, Nieves, Edwin - OPA <Nieves.Edwin@dol.gov> wrote:

Melissa,

Good morning.

In regards to your inquiry, at this time we have to decline the interview request.

The following statement is on background from a DOL spokesperson:

OFCCP has received approximately 132 inquiries to the hotline as of today, comprised of potentially actionable complaints, comments, compliance assistance requests, and anonymously provided information. We are handling any potentially actionable complaints consistent with our standard operating procedures in our compliance manual.

Thank you,

Edwin Nieves
Office of Public Affairs
U.S. Department of Labor
Washington, D.C.

b(6)

dol.gov

From: Melissa Block <MBlock@npr.org>

Sent: Monday, October 26, 2020 2:20 PM

To: Nieves, Edwin - OPA <**b(6)** DOL.gov>

Subject: RE: NPR interview request/ Executive Order on Combating Race and Sex Stereotyping

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Hello Edwin,

As I'm sure you understand, NPR doesn't submit specific interview questions ahead of time.

I can tell you that I'm broadly interested in the issues explored in the OFCCP's FAQ, which relate to how the executive order is being implemented. And, as I mentioned earlier, I'm interested in hearing more about the hotline that's been established.

Many thanks,
Melissa Block

<image001.jpg>

DOL012393

| Melissa Block | special correspondent | NPR | **b(6)** @npr.org | 1111 North Capitol St.
NE, Washington, DC 20002 | P 202 **b(6)** @nprmelissablock

From: Nieves, Edwin - OPA <Nieves.Edwin@DOL.gov>
Sent: Monday, October 26, 2020 2:03 PM
To: Melissa Block **b(6)** @npr.org>
Subject: RE: NPR interview request/ Executive Order on Combating Race and Sex Stereotyping

Hi Melissa,
Could you please send me the questions to be asked during the possible interview?
I'll need them for review.
Thanks,
Edwin

From: Melissa Block **b(6)** @npr.org>
Sent: Monday, October 26, 2020 12:17 PM
To: Nieves, Edwin - OPA <**b(6)** @DOL.gov>
Subject: RE: NPR interview request/ Executive Order on Combating Race and Sex Stereotyping

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Thank you, Edwin. I appreciate the quick response.

I've seen the RFI as published in the Federal Register last week:
<https://www.federalregister.gov/documents/2020/10/22/2020-23339/request-for-information-race-and-sex-stereotyping-and-scapegoating>

<image001.jpg>
| Melissa Block | special correspondent | NPR | **b(6)** @npr.org | 1111 North Capitol St.
NE, Washington, DC 20002 | P 202 **b(6)** @nprmelissablock

From: Nieves, Edwin - OPA **b(6)** @DOL.gov>
Sent: Monday, October 26, 2020 12:10 PM
To: Melissa Block **b(6)** @npr.org>
Cc: Gamble, Bennett B - OPA **b(6)** @dol.gov>
Subject: RE: NPR interview request/ Executive Order on Combating Race and Sex Stereotyping

Melissa,

Thank you for the email. Let me reach out to the agency.

In the meantime, please see our latest press release regarding the EO.
<https://www.dol.gov/newsroom/releases/ofccp/ofccp20201021>

Thanks again,

Edwin Nieves
Office of Public Affairs
U.S. Department of Labor
Washington, D.C.

b(6)

ol.gov

From: Melissa Block <MBlock@npr.org>

Sent: Monday, October 26, 2020 12:01 PM


To: Nieves, Edwin - OPA <**b(6)**@DOL.gov>; Gamble, Bennett B - OPA

b(6)

ol.gov

Subject: NPR interview request/ Executive Order on Combating Race and Sex Stereotyping

Importance: High

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Hello Mr. Nieves and Mr. Gamble,

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I'm writing to request an interview with OFCCP director Craig Leen about the implementation of the order. In addition, I'm seeking more information about the email and telephone hotline that OFCCP has established: in particular, how many complaints have been received to date, and what the status is of any investigation or enforcement.

Can you let me know what's possible? I'm on a tight deadline this week, and appreciate your help.

Many thanks,
Melissa Block

<image001.jpg>

| Melissa Block | special correspondent | NPR | **b(6)** | npr.org | 1111 North Capitol St.
NE, Washington, DC 20002 | P 202 | **b(6)** | @nprmelissablock

Message

From: Seely, Christopher - OFCCP [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=6B2B2010AAF743CEB373A758390001A1-SEELY, CHRI]
Sent: 10/28/2020 9:23:36 AM
To: Gean, Lissette - OFCCP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bbb9a13178c24aadb6b7613f2f9041f3-Gean, Lisse]; Williams, Tina T - OFCCP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=de1ca1bb58004746a50104bd40a50623-Williams, T]
CC: Smith, Kelley - OFCCP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0cea2c4e5e114c0daafc5aabb237c96a-Smith, Kell]
Subject: RE: NPR interview request/ Executive Order on Combating Race and Sex Stereotyping

Yes.

Chris Seely

202- [b(6)]

From: Gean, Lissette - OFCCP [b(6)]@dol.gov>
Sent: Wednesday, October 28, 2020 6:20 AM
To: Williams, Tina T - OFCCP [b(6)]@dol.gov>; Seely, Christopher - OFCCP [b(6)]@dol.gov>
Cc: Smith, Kelley - OFCCP [b(6)]@dol.gov>
Subject: FW: NPR interview request/ Executive Order on Combating Race and Sex Stereotyping

Good morning Tina and Chris,

NPR will file its story tomorrow morning. Can we have an updated figure as of tomorrow at 8am? Doable?

OFCCP has received approximately 132 inquiries to the hotline as of today, comprised of potentially actionable complaints, comments, compliance assistance requests, and anonymously provided information. We are handling any potentially actionable complaints consistent with our standard operating procedures in our compliance manual.

Thanks,
Lissette

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Sent: Wednesday, October 28, 2020 9:07 AM
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Cc: Smith, Kelley - OFCCP [b(6)]@dol.gov>
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Can you have updated numbers tomorrow morning?
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Edwin

From: Melissa Block [b(6)]@npr.org>
Sent: Wednesday, October 28, 2020 8:56 AM
To: Nieves, Edwin - OPA [b(6)]@DOL.gov>
Subject: Re: NPR interview request/ Executive Order on Combating Race and Sex Stereotyping

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Thank you, Edwin. I'll be filing my story tomorrow, so will check back then for an updated number of hotline inquiries. Think you'll have a new tally by then?

All best,
Melissa

Melissa Block
Special Correspondent
NPR

+1-202-**b(6)**

b(6) [@npr.org](mailto:b(6)@npr.org)

Twitter: @nprmelissablock

Sent from my iPhone

On Oct 28, 2020, at 8:47 AM, Nieves, Edwin - OPA <**b(6)**@dol.gov> wrote:

Melissa,

Good morning.

In regards to your inquiry, at this time we have to decline the interview request.

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Thank you,

Edwin Nieves
Office of Public Affairs
U.S. Department of Labor
Washington, D.C.

202-**b(6)**
b(6) [@dol.gov](mailto:b(6)@dol.gov)

From: Melissa Block <**b(6)**@npr.org>

Sent: Monday, October 26, 2020 2:20 PM

To: Nieves, Edwin - OPA <**b(6)**@DOL.gov>

Subject: RE: NPR interview request/ Executive Order on Combating Race and Sex Stereotyping

DOL012397

CAUTION - The sender of this message is external to the DOL network. Please use care when clicking on links and responding with sensitive information. Send suspicious email to spam@dol.gov.

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I can tell you that I'm broadly interested in the issues explored in the OFCCP's FAQ, which relate to how the executive order is being implemented. And, as I mentioned earlier, I'm interested in hearing more about the hotline that's been established.

Many thanks,
Melissa Block

<image001.jpg>

| Melissa Block | special correspondent | NPR | [b\(6\)@npr.org](mailto:b(6)@npr.org) | 1111 North Capitol St.
NE, Washington, DC 20002 | P 202-[b\(6\)@nprmelissablock](mailto:b(6)@nprmelissablock)

From: Nieves, Edwin - OPA <[b\(6\)@DOL.gov](mailto:b(6)@DOL.gov)>
Sent: Monday, October 26, 2020 2:03 PM
To: Melissa Block <[b\(6\)@npr.org](mailto:b(6)@npr.org)>
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Hi Melissa,
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Subject: RE: NPR interview request/ Executive Order on Combating Race and Sex Stereotyping

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<image001.jpg>

| Melissa Block | special correspondent | NPR | **b(6)** @npr.org | 1111 North Capitol St.
NE, Washington, DC 20002 | P 202-**b(6)** @nprmelissablock

From: Nieves, Edwin - OPA <**b(6)** @DOL.gov>
Sent: Monday, October 26, 2020 12:10 PM
To: Melissa Block <**b(6)** @npr.org>
Cc: Gamble, Bennett B - OPA <**b(6)** @dol.gov>
Subject: RE: NPR interview request/ Executive Order on Combating Race and Sex Stereotyping

Melissa,

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
<https://www.dol.gov/newsroom/releases/ofccp/ofccp20201021>

Thanks again,

Edwin Nieves
Office of Public Affairs
U.S. Department of Labor
Washington, D.C.

b(6) @dol.gov

From: Melissa Block <**b(6)** @npr.org>
Sent: Monday, October 26, 2020 12:01 PM
To: Nieves, Edwin - OPA <**b(6)** @DOL.gov>; Gamble, Bennett B - OPA
<**b(6)** @dol.gov>
Subject: NPR interview request/ Executive Order on Combating Race and Sex Stereotyping
Importance: High

 CAUTION - The sender of this message is external to the DOL network. Please use care when clicking on links and responding with sensitive information. Send suspicious email to spam@dol.gov.

Hello Mr. Nieves and Mr. Gamble,

I'm working on a story about the President's recent Executive Order (#13950) on race and sex stereotyping in training programs.

I'm writing to request an interview with OFCCP director Craig Leen about the implementation of the order. In addition, I'm seeking more information about the email and telephone hotline that OFCCP has established: in particular, how many complaints have been received to date, and what the status is of any investigation or enforcement.

Can you let me know what's possible? I'm on a tight deadline this week, and appreciate your help.

Many thanks,
Melissa Block

<image001.jpg>

| Melissa Block | special correspondent | NPR | **b(6)** | npr.org | 1111 North Capitol St.
NE, Washington, DC 20002 | P 202-**b(6)** | melissablock@npr.org

Message

From: Gean, Lissette - OFCCP [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BBB9A13178C24AADB6B7613F2F9041F3-GEAN, LISSE]
Sent: 10/29/2020 9:27:30 AM
To: Seely, Christopher - OFCCP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6b2b2010aaf743ceb373a758390001a1-Seely, Chri]
CC: Smith, Kelley - OFCCP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0cea2c4e5e114c0daafc5aabb237c96a-Smith, Kell]; Williams, Tina T - OFCCP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=de1ca1bb58004746a50104bd40a50623-Williams, T]
Subject: RE: NPR interview request/ Executive Order on Combating Race and Sex Stereotyping

Thank you, Chris!!!

L

From: Seely, Christopher - OFCCP <Seely.Christopher@dol.gov>
Sent: Thursday, October 29, 2020 9:21 AM
To: Gean, Lissette - OFCCP <Gean.Lissette@dol.gov>
Cc: Smith, Kelley - OFCCP <Smith.Kelley.J@dol.gov>; Williams, Tina T - OFCCP <Williams.Tina.T@dol.gov>
Subject: RE: NPR interview request/ Executive Order on Combating Race and Sex Stereotyping

As of 8, we're at 142 inquiries.

Chris Seely

b(6)

From: Gean, Lissette - OFCCP <b(6)@dol.gov>
Sent: Wednesday, October 28, 2020 7:02 AM
To: Seely, Christopher - OFCCP <b(6)@dol.gov>
Cc: Smith, Kelley - OFCCP <b(6)@dol.gov>; Williams, Tina T - OFCCP <b(6)@dol.gov>
Subject: RE: NPR interview request/ Executive Order on Combating Race and Sex Stereotyping

I just spoke with Edwin: the number of inquiries as of 8 am tomorrow, sent to me by 9:30 am.

Thanks,

L

From: Seely, Christopher - OFCCP <b(6)@dol.gov>
Sent: Wednesday, October 28, 2020 9:28 AM
To: Gean, Lissette - OFCCP <b(6)@dol.gov>; Williams, Tina T - OFCCP <b(6)@dol.gov>
Cc: Smith, Kelley - OFCCP <b(6)@dol.gov>
Subject: RE: NPR interview request/ Executive Order on Combating Race and Sex Stereotyping

To clarify, do you mean number of inquiries as of 8 a.m. tomorrow, or updated number of inquiries sent to you by 8 a.m. tomorrow?

Chris Seely

202

b(6)

From: Gean, Lissette - OFCCP <b(6)@dol.gov>
Sent: Wednesday, October 28, 2020 6:20 AM

DOL012401

To: Williams, Tina T - OFCCP <b(6)@dol.gov>; Seely, Christopher - OFCCP <b(6)@dol.gov>
Cc: Smith, Kelley - OFCCP <b(6)@dol.gov>
Subject: FW: NPR interview request/ Executive Order on Combating Race and Sex Stereotyping

Good morning Tina and Chris,

NPR will file its story tomorrow morning. Can we have an updated figure as of tomorrow at 8am? Doable?

OFCCP has received approximately 132 inquiries to the hotline as of today, comprised of potentially actionable complaints, comments, compliance assistance requests, and anonymously provided information. We are handling any potentially actionable complaints consistent with our standard operating procedures in our compliance manual.

Thanks,
Lissette

From: Nieves, Edwin - OPA <b(6)@DOL.gov>
Sent: Wednesday, October 28, 2020 8:56 AM
To: Gean, Lissette - OFCCP <b(6)@dol.gov>
Cc: Smith, Kelley - OFCCP <b(6)@dol.gov>
Subject: FW: NPR interview request/ Executive Order on Combating Race and Sex Stereotyping

Lissette,
Please see the reporters updated numbers request below.
Can you have updated numbers tomorrow morning?
Thanks,
Edwin

From: Melissa Block <b(6)@npr.org>
Sent: Wednesday, October 28, 2020 8:56 AM
To: Nieves, Edwin - OPA <b(6)@DOL.gov>
Subject: Re: NPR interview request/ Executive Order on Combating Race and Sex Stereotyping

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Thank you, Edwin. I'll be filing my story tomorrow, so will check back then for an updated number of hotline inquiries. Think you'll have a new tally by then?

All best,
Melissa

Melissa Block
Special Correspondent
NPR
+1-202-885-1200
b(6)@npr.org
Twitter: @nprmelissablock

Sent from my iPhone

On Oct 28, 2020, at 8:47 AM, Nieves, Edwin - OPA <b(6)@dol.gov> wrote:

Melissa,

Good morning.

In regards to your inquiry, at this time we have to decline the interview request.

The following statement is on background from a DOL spokesperson:

OFCCP has received approximately 132 inquiries to the hotline as of today, comprised of potentially actionable complaints, comments, compliance assistance requests, and anonymously provided information. We are handling any potentially actionable complaints consistent with our standard operating procedures in our compliance manual.

Thank you,

Edwin Nieves
Office of Public Affairs
U.S. Department of Labor
Washington, D.C.

b(6)@dol.gov

From: Melissa Block <b(6)@npr.org>

Sent: Monday, October 26, 2020 2:20 PM

To: Nieves, Edwin - OPA <b(6)@DOL.gov>

Subject: RE: NPR interview request/ Executive Order on Combating Race and Sex Stereotyping

CAUTION - The sender of this message is external to the DOL network. Please use care when clicking on links and responding with sensitive information. Send suspicious email to spam@dol.gov.

Hello Edwin,

As I'm sure you understand, NPR doesn't submit specific interview questions ahead of time.

I can tell you that I'm broadly interested in the issues explored in the OFCCP's FAQ, which relate to how the executive order is being implemented. And, as I mentioned earlier, I'm interested in hearing more about the hotline that's been established.

Many thanks,
Melissa Block

<image001.jpg>

| Melissa Block | special correspondent | NPR | b(6)@npr.org | 1111 North Capitol St.
NE, Washington, DC 20002 | P 202 b(6) | @nprmelissablock

From: Nieves, Edwin - OPA <[b(6)]@DOL.gov>
Sent: Monday, October 26, 2020 2:03 PM
To: Melissa Block <[b(6)]@npr.org>
Subject: RE: NPR interview request/ Executive Order on Combating Race and Sex Stereotyping

Hi Melissa,
Could you please send me the questions to be asked during the possible interview?
I'll need them for review.
Thanks,
Edwin

From: Melissa Block <[b(6)]@npr.org>
Sent: Monday, October 26, 2020 12:17 PM
To: Nieves, Edwin - OPA <[b(6)]@DOL.gov>
Subject: RE: NPR interview request/ Executive Order on Combating Race and Sex Stereotyping

CAUTION - The sender of this message is external to the DOL network. Please use care when clicking on links and responding with sensitive information. Send suspicious email to spam@dol.gov.

Thank you, Edwin. I appreciate the quick response.

I've seen the RFI as published in the Federal Register last week:
<https://www.federalregister.gov/documents/2020/10/22/2020-23339/request-for-information-race-and-sex-stereotyping-and-scapegoating>

<image001.jpg>
| Melissa Block | special correspondent | NPR | [b(6)]@npr.org | 1111 North Capitol St.
NE, Washington, DC 20002 | P 202 [b(6)]@nprmelissablock

From: Nieves, Edwin - OPA <[b(6)]@DOL.gov>
Sent: Monday, October 26, 2020 12:10 PM
To: Melissa Block <[b(6)]@npr.org>
Cc: Gamble, Bennett B - OPA <[b(6)]@dol.gov>
Subject: RE: NPR interview request/ Executive Order on Combating Race and Sex Stereotyping

Melissa,

Thank you for the email. Let me reach out to the agency.

In the meantime, please see our latest press release regarding the EO.
<https://www.dol.gov/newsroom/releases/ofccp/ofccp20201021>

Thanks again,

Edwin Nieves
Office of Public Affairs

U.S. Department of Labor
Washington, D.C.

b(6)

dol.gov

From: Melissa Block b(6) npr.org>

Sent: Monday, October 26, 2020 12:01 PM

To: Nieves, Edwin - OPA <b(6) DOL.gov>; Gamble, Bennett B - OPA
b(6) dol.gov>

Subject: NPR interview request/ Executive Order on Combating Race and Sex Stereotyping

Importance: High

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Hello Mr. Nieves and Mr. Gamble,

I'm working on a story about the President's recent Executive Order (#13950) on race and sex stereotyping in training programs.

I'm writing to request an interview with OFCCP director Craig Leen about the implementation of the order. In addition, I'm seeking more information about the email and telephone hotline that OFCCP has established: in particular, how many complaints have been received to date, and what the status is of any investigation or enforcement.

Can you let me know what's possible? I'm on a tight deadline this week, and appreciate your help.

Many thanks,
Melissa Block

<image001.jpg>

| Melissa Block | special correspondent | NPR | b(6) npr.org | 1111 North Capitol St.
NE, Washington, DC 20002 | P 202 b(6) @nprmelissablock

DOL012405

Message

From: Seely, Christopher - OFCCP [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=6B2B2010AAF743CEB373A758390001A1-SEELY, CHRI]
Sent: 10/29/2020 12:44:32 PM
To: Nieves, Edwin - OPA [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9f3db74d1321490e971fb2bd7cb88205-Nieves, Edw]; Gean, Lissette - OFCCP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bbb9a13178c24aadb6b7613f2f9041f3-Gean, Lisse]; Williams, Tina T - OFCCP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=de1ca1bb58004746a50104bd40a50623-Williams, T]
Subject: RE: NPR interview request/ Executive Order on Combating Race and Sex Stereotyping

Yes, no problem.

Chris Seely

202 [b(6)]

From: Nieves, Edwin - OPA <[b(6)]@dol.gov>
Sent: Thursday, October 29, 2020 9:40 AM
To: Gean, Lissette - OFCCP <[b(6)]@dol.gov>; Williams, Tina T - OFCCP <[b(6)]@dol.gov>; Seely, Christopher - OFCCP <[b(6)]@dol.gov>
Subject: RE: NPR interview request/ Executive Order on Combating Race and Sex Stereotyping

Thanks.

From: Gean, Lissette - OFCCP <[b(6)]@dol.gov>
Sent: Thursday, October 29, 2020 12:18 PM
To: Nieves, Edwin - OFCCP <[b(6)]@dol.gov>; Williams, Tina T - OFCCP <[b(6)]@dol.gov>; Seely, Christopher - OFCCP <[b(6)]@dol.gov>
Subject: RE: NPR interview request/ Executive Order on Combating Race and Sex Stereotyping

Hi Tina and Chris,

We received a follow up request from NPR for their Friday Morning Edition story on EO 13950 – Can we provide OPA by 5:00 pm today the updated number of hotline inquiries as of 4:00 pm, October 29, 2020?

Hi Edwin: The Hotline went up late afternoon on Friday, September 25, 2020.

Thanks,
L

From: Nieves, Edwin - OPA <[b(6)]@DOL.gov>
Sent: Thursday, October 29, 2020 12:04 PM
To: Gean, Lissette - OFCCP <[b(6)]@dol.gov>
Subject: FW: NPR interview request/ Executive Order on Combating Race and Sex Stereotyping

Lissette,
Please see the follow up below.
Let me know.
Thanks,
Edwin

From: Melissa Block <b(6)@npr.org>
Sent: Thursday, October 29, 2020 11:07 AM
To: Nieves, Edwin - OPA <b(6)@DOL.gov>
Subject: Re: NPR interview request/ Executive Order on Combating Race and Sex Stereotyping

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Thanks much!

Think you'll have a new number by end of the day? I'm filing for tomorrow Morning Edition and want to be as up to date as possible.

Also, what date did the hotline go up?

Melissa Block
Special Correspondent
NPR
+1-202- b(6)
b(6)@npr.org
Twitter: @nprmelissablock

Sent from my iPhone

On Oct 29, 2020, at 11:03 AM, Nieves, Edwin - OPA <b(6)@dol.gov> wrote:

Melissa,
142 as of 8 a.m. this morning.
Thanks,
Edwin

From: Melissa Block <b(6)@npr.org>
Sent: Thursday, October 29, 2020 10:53 AM
To: Nieves, Edwin - OPA <b(6)@DOL.gov>
Subject: RE: NPR interview request/ Executive Order on Combating Race and Sex Stereotyping

CAUTION - The sender of this message is external to the DOL network. Please use care when clicking on links and responding with sensitive information. Send suspicious email to spam@dol.gov.

Hello Edwin,

I'll be filing by 4 pm today. Can you please check on an updated number of responses to the hotline?(I'm looking for the total, both phone and email.)

It also would be helpful to know the date the hotline went up.

Many thanks,
Melissa

<image001.jpg>

| Melissa Block | special correspondent | NPR | **b(6)** | npr.org | 1111 North Capitol St.
NE, Washington, DC 20002 | P 202 **b(6)** | @nprmelissablock

From: Nieves, Edwin - OPA <**b(6)** @DOL.gov>

Sent: Wednesday, October 28, 2020 9:06 AM

To: Melissa Block <**b(6)** @npr.org>

Subject: RE: NPR interview request/ Executive Order on Combating Race and Sex Stereotyping

I don't know. Let me reach out to the agency.

From: Melissa Block <**b(6)** @npr.org>

Sent: Wednesday, October 28, 2020 8:56 AM

To: Nieves, Edwin - OPA <**b(6)** @DOL.gov>

Subject: Re: NPR interview request/ Executive Order on Combating Race and Sex Stereotyping

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Thank you, Edwin. I'll be filing my story tomorrow, so will check back then for an updated number of hotline inquiries. Think you'll have a new tally by then?

All best,
Melissa

Melissa Block
Special Correspondent
NPR

+1-202 **b(6)**
b(6) @npr.org

Twitter: @nprmelissablock

Sent from my iPhone

On Oct 28, 2020, at 8:47 AM, Nieves, Edwin - OPA <**b(6)** @dol.gov> wrote:

Melissa,

Good morning.

In regards to your inquiry, at this time we have to decline the interview request.

The following statement is on background from a DOL spokesperson:

DOL012408

OFCCP has received approximately 132 inquiries to the hotline as of today, comprised of potentially actionable complaints, comments, compliance assistance requests, and anonymously provided information. We are handling any potentially actionable complaints consistent with our standard operating procedures in our compliance manual.


Thank you,

Edwin Nieves
Office of Public Affairs
U.S. Department of Labor
Washington, D.C.

b(6)

dol.gov

From: Melissa Block **b(6)** @npr.org>
Sent: Monday, October 26, 2020 2:20 PM
To: Nieves, Edwin - OPA **b(6)** @DOL.gov>
Subject: RE: NPR interview request/ Executive Order on Combating Race and Sex Stereotyping

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Hello Edwin,

As I'm sure you understand, NPR doesn't submit specific interview questions ahead of time.

I can tell you that I'm broadly interested in the issues explored in the OFCCP's FAQ, which relate to how the executive order is being implemented. And, as I mentioned earlier, I'm interested in hearing more about the hotline that's been established.

Many thanks,
Melissa Block

<image001.jpg>

| Melissa Block | special correspondent | NPR **b(6)** @npr.org | 1111 North Capitol St. NE, Washington, DC 20002 | P 202-**b(6)** @nprmelissablock

From: Nieves, Edwin - OPA <**b(6)** @DOL.gov>
Sent: Monday, October 26, 2020 2:03 PM
To: Melissa Block <**b(6)** @npr.org>
Subject: RE: NPR interview request/ Executive Order on Combating Race and Sex Stereotyping

Hi Melissa,
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I'll need them for review.

Thanks,
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From: Melissa Block [b(6)] <[b(6)]@npr.org>
Sent: Monday, October 26, 2020 12:17 PM
To: Nieves, Edwin - OPA <[b(6)]@dol.gov>
Subject: RE: NPR interview request/ Executive Order on Combating Race and Sex Stereotyping

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I've seen the RFI as published in the Federal Register last week:
<https://www.federalregister.gov/documents/2020/10/22/2020-23339/request-for-information-race-and-sex-stereotyping-and-scapegoating>

<image001.jpg>
| Melissa Block | special correspondent | NPR | [b(6)]@npr.org | 1111 North
Capitol St. NE, Washington, DC 20002 | P 202- [b(6)]@nprmelissablock

From: Nieves, Edwin - OPA [b(6)] <[b(6)]@dol.gov>
Sent: Monday, October 26, 2020 12:10 PM
To: Melissa Block [b(6)] <[b(6)]@npr.org>
Cc: Gamble, Bennett B - OPA <[b(6)]@dol.gov>
Subject: RE: NPR interview request/ Executive Order on Combating Race and Sex Stereotyping

Melissa,

Thank you for the email. Let me reach out to the agency.

In the meantime, please see our latest press release regarding the EO.
<https://www.dol.gov/newsroom/releases/ofccp/ofccp20201021>

Thanks again,

Edwin Nieves
Office of Public Affairs
U.S. Department of Labor
Washington, D.C.

[b(6)]@dol.gov

From: Melissa Block [b(6)] <npr.org>
Sent: Monday, October 26, 2020 12:01 PM
To: Nieves, Edwin - OPA <[b(6)]@dol.gov>; Gamble, Bennett B - OPA
<[b(6)]@dol.gov>
Subject: NPR interview request/ Executive Order on Combating Race and Sex Stereotyping
Importance: High

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Hello Mr. Nieves and Mr. Gamble,

I'm working on a story about the President's recent Executive Order (#13950) on race and sex stereotyping in training programs.

I'm writing to request an interview with OFCCP director Craig Leen about the implementation of the order. In addition, I'm seeking more information about the email and telephone hotline that OFCCP has established: in particular, how many complaints have been received to date, and what the status is of any investigation or enforcement.

Can you let me know what's possible? I'm on a tight deadline this week, and appreciate your help.

Many thanks,
Melissa Block

<image001.jpg>

| Melissa Block | special correspondent | NPR [b(6)] <npr.org> | 1111 North
Capitol St. NE, Washington, DC 20002 | P 202 [b(6)] <[b(6)]@nprmelissablock

Message

From: Gean, Lissette - OFCCP [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BBB9A13178C24AADB6B7613F2F9041F3-GEAN, LISSE]
Sent: 10/29/2020 12:43:28 PM
To: Benjamin, Shenita A - OFCCP CTR [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9cb2432a12734a9bbdb85537fd322dfd-Benjamin, S]
CC: Tretheway, Andrea - OFCCP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4bcd1bd011a4f19a909b742d2b454dc-Tretheway,]; Rosser, Shamika M - OFCCP CTR [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bf4e9a794565427d8fb7320b1ccdff67-Rosser, Sha]
Subject: RE: Accomplishments Report - Settlement
Attachments: OFCCP Accomplishments Report - 10.29.2020 - Deloitte.docx

In the interest of time, I reviewed the report and made the attached edits. I will send the report to Craig for review/approval.

Please review my edits prior to our Monday meeting. We'll be discussing the preparation of this report.

Thank you,
Lissette

From: Benjamin, Shenita A - OFCCP CTR <Benjamin.Shenita.A@dol.gov>
Sent: Thursday, October 29, 2020 11:00 AM
To: Gean, Lissette - OFCCP <[REDACTED]@dol.gov>
Cc: Tretheway, Andrea - OFCCP <Tretheway.Andrea.L@dol.gov>; Rosser, Shamika M - OFCCP CTR <Rosser.Shamika.M@dol.gov>
Subject: RE: Accomplishments Report - Settlement

Good morning Lissette,

Update: The information below was added to the Accomplishment Report and sent to Ann for review.

Thank you,
Shenita

From: Benjamin, Shenita A - OFCCP CTR
Sent: Thursday, October 29, 2020 10:18 AM
To: Gean, Lissette - OFCCP <[REDACTED]@dol.gov>
Cc: Tretheway, Andrea - OFCCP <Tretheway.Andrea.L@dol.gov>; Rosser, Shamika M - OFCCP CTR <Rosser.Shamika.M@dol.gov>
Subject: RE: Accomplishments Report - Settlement

Good morning Lissette,

I will add to the Accomplishment Report now.

Ann... Please hold off on reviewing the report. I will update you once complete.

With Appreciation,

Shenita A. Benjamin

Sr. Executive Assistant

Office of Federal Contract Compliance Programs

U.S. Department of Labor

P: (202) **b(6)**

Benjamin.Shenita.A@dol.gov



From: Gean, Lissette - OFCCP <**b(6)**@dol.gov>

Sent: Thursday, October 29, 2020 10:14 AM

To: Rosser, Shamika M - OFCCP CTR <Rosser.Shamika.M@dol.gov>; Benjamin, Shenita A - OFCCP CTR <Benjamin.Shenita.A@dol.gov>

Cc: Tretheway, Andrea - OFCCP <Tretheway.Andrea.L@dol.gov>

Subject: Accomplishments Report - Settlement

Hi,

Please add the Deloitte settlement to this week's Accomplishments Report.

The conciliation agreement was signed on October 28, 2020. Following is information you may use to draft the entry in the report:

Deloitte Services LP, a leading global provider of audit and assurance, consulting, financial advisory, risk advisory, tax, and related services will pay \$275,000 in back pay and interest to 34 female employees to resolve allegations of pay discrimination at its facility located in Hermitage, Tennessee. A compliance review by the U.S. Department of Labor's Office of Federal Contract Compliance Programs found that the federal contractor discriminated against 34 females employed in Technology-Exempt positions by paying them less than their male counterparts. Deloitte Services LP denies the allegations and has agreed to resolve the issue through a Conciliation Agreement. Deloitte Services LP will also provide training to all managers, supervisors and other company officials who oversee pay decisions.

Thank you,
Lissette

Lissette Gean

Chief of Staff

Office of Federal Contract Compliance Programs

b(6)

@dol.gov



Message

From: Davidson, Patricia J - OFCCP [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=881AFF8BF6FB4A85AE33921A0CB1596B-DAVIDSON, P]
Sent: 10/29/2020 5:25:28 PM
To: Kaiser, Javaid - OFCCP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1e5f5c483d9741aa8d6ed6b0dadd6027-Kaiser, Jav]; Fort, Harvey D - OFCCP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6f10edeb3ed442e3a4f1b0ef426f9703-Fort, Harve]; Kraak, Margaret - OFCCP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5d6c06403a2548b7a2fe40c35cc5e1f2-Kraak, Marg]
CC: LaJeunesse, Robert - OFCCP (LaJeunesse.Robert@dol.gov) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c9f3ffa568704a2db7b79e20a25c080e-LaJeunesse,]
Subject: FW: AP query - NAACP lawsuit against Executive Order 13950

Dr. Kaiser, Harvey and Margaret,

I know Javaid has logged off for the day, but I wanted to be sure someone was working on this as it is a priority. Please let me know.

Best,
Patty

Patricia Davidson
Deputy Director
Office of Federal Contract
Compliance Programs

(S) [b(6)]
(C) [b(6)]

From: Leen, Craig - OFCCP <Leen.Craig@DOL.gov>
Sent: Thursday, October 29, 2020 4:45 PM
To: Kaiser, Javaid - OFCCP <Kaiser.Javaid@dol.gov>
Cc: Davidson, Patricia J - OFCCP <[b(6)]@dol.gov>; LaJeunesse, Robert - OFCCP <[b(6)]@dol.gov>; Gean, Lissette - OFCCP <[b(6)]@dol.gov>; Williams, Tina T - OFCCP <[b(6)]@dol.gov>; Lupardo, Jeffrey - SOL <[b(6)]@dol.gov>
Subject: Re: AP query - NAACP lawsuit against Executive Order 13950

Please note, the complaint at issue alleges that each organization is a federal contractor. I'm copying Jeff as well. Thanks.

Get Outlook for iOS

From: Leen, Craig - OFCCP <Leen.Craig@DOL.gov>
Sent: Thursday, October 29, 2020 4:34:42 PM
To: Kaiser, Javaid - OFCCP <Kaiser.Javaid@dol.gov>
Cc: Davidson, Patricia J - OFCCP <[b(6)]@dol.gov>; LaJeunesse, Robert - OFCCP <[b(6)]@dol.gov>; Gean, Lissette - OFCCP <[b(6)]@dol.gov>; Williams, Tina T - OFCCP <[b(6)]@dol.gov>
Subject: Fwd: AP query - NAACP lawsuit against Executive Order 13950

Javaid,

DOL012417

This is time sensitive. Please advise whether either the National Urban League or National Fair Housing Alliance are federal contractors under OFCCP's jurisdiction.

Thanks,
Craig

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From: Leen, Craig - OFCCP <Leen.Craig@DOL.gov>
Sent: Thursday, October 29, 2020 4:31 PM
To: O'Scannlain, Kate S - SOL
Subject: Re: AP query - NAACP lawsuit against Executive Order 13950

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Subject: FW: AP query - NAACP lawsuit against Executive Order 13950

Can you please check to see if either named party is a gov contractor for purposes of OFCCP? Thanks!

Kate S. O'Scannlain | Solicitor of Labor
200 Constitution Avenue, NW, Rm S2002, Washington, DC 20210
D 202-b(6) | E oscannlain.kate.s@dol.gov

From: Sweeney, Megan P - OPA <Sweeney.Megan.P@DOL.gov>
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Leen, Craig - OFCCP <Leen.Craig@DOL.gov>
Subject: RE: AP query - NAACP lawsuit against Executive Order 13950

Have not seen Complaint?


Kate S. O'Scannlain | Solicitor of Labor
200 Constitution Avenue, NW, Rm S2002, Washington, DC 20210
D 202-b(6) | E oscannlain.kate.s@dol.gov

DOL012418

From: Sweeney, Megan P - OPA <Sweeney.Megan.P@DOL.gov>
Sent: Thursday, October 29, 2020 1:19 PM
To: OScannlain, Kate S - SOL <OScannlain.Kate.S@dol.gov>; Bozzuto, Robert F - OPA <Bozzuto.Robert.F@DOL.gov>;
Leen, Craig - OFCCP <Leen.Craig@DOL.gov>
Subject: FW: AP query - NAACP lawsuit against Executive Order 13950

I'm guessing we're going to defer to the White House, but I wanted to make you aware of this. Good to defer?

From: Olson, Alexandra <[b\(6\)@ap.org](mailto:b(6)@ap.org)>
Sent: Thursday, October 29, 2020 1:14 PM
To: Sweeney, Megan P - OPA <Sweeney.Megan.P@DOL.gov>
Subject: AP query - NAACP lawsuit against Executive Order 13950

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Hi Megan,

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Will the government have any comment on the lawsuit and its allegation that it violates the constitutional guarantee to free speech?

Thank you.
Best,
Alexandra

AP

ASSOCIATED PRESS

Alexandra Olson
Business reporter
M. 917- **b(6)**
@alexolson99

200 Liberty Street, 5th Floor
New York, NY 10281
Office : 212- **b(6)**
www.ap.org

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Message

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Sent: 10/29/2020 6:36:08 PM
To: OScannlain, Kate S - SOL [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fc246996e74e4c8d8c6e5c73700c3406-OScannlain,]
Subject: Fwd: National Urban League

Please see below.

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From: Kaiser, Javaid - OFCCP <Kaiser.Javaid@dol.gov>
Sent: Thursday, October 29, 2020 5:58 PM
To: Leen, Craig - OFCCP
Cc: Davidson, Patricia J - OFCCP; Lupardo, Jeffrey - SOL; Dankowitz, Beverly - SOL
Subject: FW: National Urban League

Hi Craig,
National Urban League (NY location) has a contract (See below).
National Fair Housing Alliance Inc. does not have a contract but is registered in SAM to do business with the government.
Javaid

National Urban League, Inc
1101 Connecticut Ave NW Ste 810
Washington DC 20036
202-898-1604
Duns 176800944
Last FPDS activity for duns 176800944 shows 6/15/2000 as purchase order for \$25k

SAMS registration: only registered for NY location

National Urban League, Inc.	80 PINE ST
DUNS: 073275547 CAGE Code: 5M855	New York, NY, 10005-1702 ,
Status: Active	UNITED STATES
Expiration Date: 08/31/2021	
Purpose of Registration: All Awards	

For NY location with duns of 073272247 there is activity

https://www.fpds.gov/ezsearch/search.do?q=073275547&s=FPDS.GOV&templateName=1.5.1&indexName=awardfull&sortBy=SIGNED_DATE&desc=Y

Contract : DOLETA16C0126
Start: 9/20/19
End: 9/19/23
Base all Options: \$11,124,425.68
<https://www.fpds.gov/common/jsp/LaunchWebPage.jsp?command=execute&requestid=112759290&version=1.5>

National Fair Housing Alliance Inc
1331 Pennsylvania Ave NW Ste 650
Washington, DC 20004
202-898-1661
Duns: 556005114
SAMS active federal registration to do business with govt.

National Fair Housing Alliance
DUNS: 556005114 CAGE Code: 3FC23
Status: Active
Expiration Date: 06/02/2021
Purpose of Registration: Federal Assistance Awards Only

1331 Pennsylvania Ave Nw Ste 650
WASHINGTON, DC, 20004-1710,
UNITED STATES

Last FPDS activity for contracts shows as 2/27/17

https://www.fpds.gov/ezsearch/fpdsportal?q=556005114&s=FPDS.GOV&templateName=1.5.1&indexName=awardfull&sortBy=SIGNED_DATE&desc=Y

USAspending does show grant activity <https://www.usaspending.gov/search/64a42ff7904eb6235b541a00d6629d85> no subcontracts were listed

No current contracts were found.

From: Kaiser, Javaid - OFCCP <Kaiser.Javaid@dol.gov>
Sent: Thursday, October 29, 2020 2:48 PM
To: Nelson, Margaret - OFCCP <[b\(6\)@dol.gov](mailto:b(6)@dol.gov)>
Subject: FW: AP query - NAACP lawsuit against Executive Order 13950

Hi Margie,
This is time sensitive. Please respond back today.
Thanks.

From: Leen, Craig - OFCCP <Leen.Craig@DOL.gov>
Sent: Thursday, October 29, 2020 4:45 PM
To: Kaiser, Javaid - OFCCP <Kaiser.Javaid@dol.gov>
Cc: Davidson, Patricia J - OFCCP <Davidson.Patricia@dol.gov>; LaJeunesse, Robert - OFCCP <Lajeunesse.Robert@dol.gov>; Gean, Lissette - OFCCP <Gean.Lissette@dol.gov>; Williams, Tina T - OFCCP <Williams.Tina.T@dol.gov>; Lupardo, Jeffrey - SOL <Lupardo.Jeffrey@dol.gov>
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b(6)

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Leen, Craig - OFCCP <Leen.Craig@DOL.gov>
Subject: RE: AP query - NAACP lawsuit against Executive Order 13950

Have not seen Complaint?

DOL012422

Kate S. O'Scannlain | Solicitor of Labor
200 Constitution Avenue, NW, Rm S2002, Washington, DC 20210
D 202 [b(6)] | E oscannlain.kate.s@dol.gov

From: Sweeney, Megan P - OPA <Sweeney.Megan.P@DOL.gov>
Sent: Thursday, October 29, 2020 1:19 PM
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AP

ASSOCIATED PRESS

Alexandra Olson
Business reporter
M. 91 [b(6)]
@alexolson99

200 Liberty Street, 5th Floor
New York, NY 10281
Office : 212 [b(6)]
www.ap.org

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Message

From: Davidson, Patricia J - OFCCP [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=881AFF8BF6FB4A85AE33921A0CB1596B-DAVIDSON, P]
Sent: 10/29/2020 2:56:38 PM
To: Leen, Craig - OFCCP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ffd4a5b3cc74f49a5d2bf4c747416d4-Leen, Craig]; Dankowitz, Beverly - SOL [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d35b44f0957b4cdeb796c97e5990ebcf-Dankowitz,]; Legum, Radine - SOL [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d21aa80a5d2c4ea498ef4f14b7be64ff-Legum, Radi]; Bickerstaffe, Keir - SOL [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=76946342408840629d14d5b8c536a764-Bickerstaff]; Lupardo, Jeffrey - SOL [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e9be16c2b6ba4424bee7db27be14389e-Lupardo, Je]
CC: Gaglione, Robert J - OFCCP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1488b4650b734927906fed5870ab9642-Gaglione, R]; Gean, Lissette - OFCCP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bbb9a13178c24aadb6b7613f2f9041f3-Gean, Lisse]; Kaiser, Javaid - OFCCP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1e5f5c483d9741aa8d6ed6b0dadd6027-Kaiser, Jav]; Smith, Kelley - OFCCP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0cea2c4e5e114c0daafc5aabb237c96a-Smith, Kell]; Williams, Tina T - OFCCP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=de1ca1bb58004746a50104bd40a50623-Williams, T]; LaJeunesse, Robert - OFCCP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c9f3ffa568704a2db7b79e20a25c080e-LaJeunesse,]
Subject: RE: EO 13950 Lawsuit

I will advise the RDs and NO Division Directors.

Patricia Davidson
Deputy Director
Office of Federal Contract
Compliance Programs
(O) 202
(C) 202 **b(6)**

From: Leen, Craig - OFCCP <Leen.Craig@DOL.gov>
Sent: Thursday, October 29, 2020 2:51 PM
To: Dankowitz, Beverly - SOL <**b(6)**@dol.gov>; Legum, Radine <**b(6)**@dol.gov>; Bickerstaffe, Keir - SOL <**b(6)**@dol.gov>; Lupardo, Jeffrey - SOL <**b(6)**@dol.gov>
Cc: Gaglione, Robert J - OFCCP <Gaglione.Robert.J@dol.gov>; Davidson, Patricia J - OFCCP <**b(6)**@dol.gov>; Gean, Lissette - OFCCP <**b(6)**@dol.gov>; Kaiser, Javaid - OFCCP <**b(6)**@dol.gov>; Smith, Kelley - OFCCP <**b(6)**@dol.gov>; Williams, Tina T - OFCCP <**b(6)**@dol.gov>; LaJeunesse, Robert - OFCCP <**b(6)**@dol.gov>
Subject: EO 13950 Lawsuit

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Sent: 10/29/2020 2:59:00 PM
To: Sen Diana S - OFCCP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e39e65e9739f4cfcb3368f451bfcc23a-Sen, Diana]; Navarro, Carmen - OFCCP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5666fc8d7dc041e1b2e5e3fe231df766-Navarro, Ca]; Speer, Melissa - OFCCP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b53edd248cbd4e9a9e572bb94b966ece-Speer, Meli]; Hodge, Michele - OFCCP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9a2682d410ed45deafdb13d08bcf7b39-Hodge, Mich]; Suhr, Jane - OFCCP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d86962c51c1d44aaa66fa16566997d4c-Suhr, Jane]
Subject: FW: EO 13950 Lawsuit
Attachments: 2020-10-29 NUL v. Trump - Complaint - FINAL.pdf

Please see Craig's message below. We will keep you updated as we receive information.

Patricia Davidson
Deputy Director
Office of Federal Contract
Compliance Programs
(O) 202
(C) 202 **b(6)**

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

NATIONAL URBAN LEAGUE,
80 Pine Street, 9th Floor,
New York, NY 10005

NATIONAL FAIR HOUSING ALLIANCE,
1331 Pennsylvania Avenue NW, #650,
Washington, DC 20004

Plaintiffs,

v .

Case No. _____

DONALD J. TRUMP,
in his official capacity as
President of the United States;
1600 Pennsylvania Avenue NW,
Washington, DC 20500

EUGENE SCALIA,
in his official capacity as
United States Secretary of Labor;
200 Constitution Ave NW,
C-2318
Washington, DC 20210

U.S. DEPARTMENT OF LABOR,
200 Constitution Ave NW,
S-2521
Washington, DC 20210

Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs National Urban League and National Fair Housing Alliance, on behalf of themselves and all others similarly situated (collectively, “Plaintiffs”), bring this civil rights class action for injunctive and declaratory relief against Defendants President Donald J. Trump; Eugene Scalia, United States Secretary of Labor; and the United States Department of Labor (collectively, “Defendants”) for violations of the First and Fifth Amendments to the United States Constitution.

PRELIMINARY STATEMENT

1. Every nation’s history includes unsettling truths that many would prefer to forget or deny. But true patriotism demands confronting the truths of our history—no matter how embarrassing or dishonorable—and undertaking the difficult work of learning from the lessons of our past in order to move forward. For the United States, that work requires reckoning with our shameful legacy of racial subjugation of Black people in this country— from slavery and Jim Crow to mass incarceration and police violence—as well as our long history of express discrimination against other people of color, women, and LGBTQ persons.

2. Without uninhibited discussion and examination of that legacy, we are ill-equipped as a nation to address its ongoing manifestations in present-day forms of discrimination and bias. The First Amendment protection of free speech in the United States Constitution ensures that all Americans are empowered to engage freely in an exchange of ideas, truth-telling, and difficult conversations about this history. This protection extends equally to those who engage with the federal government, where the policies that affect the lives of all Americans are developed, enacted, and funded.

3. On September 22, 2020, President Trump issued Executive Order 13950, entitled “Executive Order on Combating Race and Sex Stereotyping” (“EO 13950” or “the Order”). Contrary to its title, the Order is an extraordinary and unprecedented act by the Trump Administration to undermine efforts to foster diversity and inclusion in the workplace. The Order

strikes at the heart of those critical efforts by government and nongovernment actors—including trainings and other forms of private speech in the workplace—to eradicate race and sex stereotyping and other continuing manifestations of entrenched discrimination and bias against people of color, women, and LGBTQ individuals.

4. EO 13950 prohibits the National Urban League, the National Fair Housing Alliance, and Class members (including current and prospective federal contractors and grant recipients) from discussing and promoting concepts like, among other things, systemic race and sex discrimination and implicit race and sex biases. In so doing, EO 13950 prevents Plaintiffs from effectively addressing the persistent harms, privileges, and disadvantages associated with systemic discrimination and implicit biases. This broad-based prohibition of private speech on matters of immense public concern and public welfare violates the guarantees of Free Speech, Equal Protection, and Due Process, which are fundamental to the rights secured in the United States Constitution. The depth and scope of EO 13950’s constitutional flaws are alarming and, if left unremedied, will erode the core principles of our democracy and the foundations of our pluralistic society.

5. The right to Free Speech, secured in the First Amendment, is foundational to a free and democratic republic. As stated by the United States Supreme Court, “[i]f there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.” *Texas v. Johnson*, 491 U.S. 397, 415 (1989) (quoting *W. Va. Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943)).

6. Yet, in an exercise of authoritarian thought- and speech-control, EO 13950 imposes expansive restrictions on the National Urban League, the National Fair Housing Alliance, and the

Class based on President Trump’s inaccurate and discriminatory viewpoints, including his opinions that our Nation’s founders—many of whom enslaved Africans in bondage—founded the United States on principles of racial and gender equality; that discussions of the lingering and damaging effects of race and sex discrimination constitute “divisive concepts,” “race or sex stereotyping,” or “race or sex scapegoating”; and that discussing, acknowledging, or remedying the harms, privileges, and disadvantages attendant to systemic race and sex discrimination would negatively impact the “economy and efficiency in Federal contracting” and the “unity in the Federal workforce.”

7. EO 13950 presents a false rendering of our Nation’s history by misrepresenting the Founders as inspired by the “belief in the inherent equality of every individual” and “reject[ing] racialized views of America” that “our government ‘was made on the white basis’ ‘by white men, for the benefit of white men.’” It is beyond dispute that, at the time of our Nation’s founding, the Founders embraced a narrative of white supremacy, benefitted economically from the free labor of enslaved Africans, considered enslaved Africans to be three-fifths of a person in the United States Constitution, denied women and people of color the right to vote and other political rights, and passed laws that uniformly and expressly discriminated on the basis of race and sex.

8. Almost seven decades after the ratification of the United States Constitution, the United States Supreme Court in *Dred Scott v. Sanford*, 60 U.S. 393 (1857), concluded that Black people could not be “citizens” entitled to “the rights and privileges” under the United States Constitution because they “had for more than a century before” the Constitution’s adoption “been regarded as beings of an inferior order, and altogether unfit to associate with the white race, either in social or political relations; and so far inferior, that they had no rights which the white man was bound to respect.” *Id.* at 404-07.

9. United States Supreme Court opinions, both before and after *Dred Scott*, have likewise acknowledged and sometimes endorsed racist views and opinions about other people of color. See, e.g., *Johnson & Graham's Lessee v. M'Intosh*, 21 U.S. 543, 590 (1823) (referring to Native Americans as “fierce savages, whose occupation was war and whose subsistence was drawn chiefly from the forest”); *Plessy v. Ferguson*, 163 U.S. 537, 561 (1896) (Harlan, J., dissenting) (disagreeing with *de jure* segregation, but noting that Chinese people are “a race so different from our own that we do not permit those belonging to it to become citizens of the United States”); *Hernandez v. Texas*, 347 U.S. 475, 479-80 (1954) (in first case recognizing Equal Protection rights for people of Mexican descent, noting that Mexican-American children had attended segregated schools, that a restaurant “prominently displayed a sign announcing ‘No Mexicans Served,’” and that “[o]n the courthouse grounds . . . , there were two men’s toilets, one unmarked, and the other marked ‘Colored Men’ and ‘Hombres Aqui’ (‘Men Here’)”). *Id.* at 479-80.

10. Sexism also has deep roots in our political and social history. For example, a concurring opinion in *Bradwell v. Illinois*, 83 U.S. 130 (1872), in which the United States Supreme Court refused to recognize a woman’s right to be admitted as a practicing attorney, considered it “a maxim of that system of jurisprudence that a woman had no legal existence separate from her husband, who was regarded as her head and representative in the social state The paramount destiny and mission of women are to fulfill the noble and benign offices of wife and mother.” *Id.* at 141.

11. Discrimination against LGBTQ individuals has also featured prominently in our country’s laws. A concurring opinion in *Bowers v. Hardwick*, 478 U.S. 186 (1986), in which the United States Supreme Court refused to invalidate criminal sodomy laws in Georgia, noted that “the proscriptions against sodomy have very ‘ancient roots.’” Decisions of individuals relating to

homosexual conduct have been subject to state intervention throughout the history of Western civilization. Condemnation of those practices is firmly rooted in Judeo-Christian moral and ethical standards. . . . The common law of England, including its prohibition of sodomy, became the received law of Georgia and the other Colonies. In 1816, the Georgia Legislature passed the statute at issue here, and that statute has been continuously in force in one form or another since that time.” *Id.* at 196-97.

12. The Supreme Court has since discredited these racist, sexist, and homophobic views, and our Nation has made significant progress in recognizing and enforcing the equal rights of people of color, women, and LGBTQ individuals. But members of these protected groups continue to face substantial societal discrimination, including barriers to equal employment opportunities, and are still, to the present day, too often subject to hostile work environments.

13. By denying the longstanding discrimination against people of color, women, and LGBTQ individuals, EO 13950 is an invitation for revisionism and retrogression on matters of truth and equality. To the detriment of employees of color, women, and LGBTQ individuals, EO 13950 prohibits laudable and necessary efforts by Plaintiffs who want to counteract the effects of systemic discrimination and biases in the workplace. This, in turn, prevents Plaintiffs from creating and maximizing economic efficiencies by ensuring the satisfaction and inclusivity of all their employees, and reaping the full benefits of a diverse and productive workforce.

14. Despite the urgent need to address and remedy systemic discrimination and counter the harms stemming from implicit biases, EO 13950 unconstitutionally forces Plaintiffs to choose between censoring speech on these important issues or forfeiting any opportunity to enter into a federal contract for the provision of goods or services or to receive federal funds as a grant recipient. The infringement of Plaintiffs’ private speech on these matters of public concern and

public welfare is deeply troubling. But Defendants' actions are even more menacing given that issues of systemic race and sex discrimination have been at the forefront of public discourse throughout the Trump Administration. This censorship of Plaintiffs' speech by the federal government is anathema to a free democracy.

15. Furthermore, EO 13950 utilizes imprecise and ill-defined terms that reflect the factually inaccurate viewpoints and opinions of President Trump and are dependent on the speculative and subjective reactions of individuals to the protected speech. The difficulty—if not impossibility—of knowing precisely what is included in the wide swath of speech censored by EO 13950 has already had, and will continue to have, a broad chilling effect. To protect their status as federal contractors or grant recipients, Plaintiffs and the Class would have to err on the side of caution and interpret the EO 13950 broadly to ensure compliance with its vague and seemingly expansive mandates. When combined with the EO's encouragement that individuals report perceived violations of the Order's terms by calling a "hotline" telephone number at the Department of Labor, the uncertain boundaries of the speech purportedly prohibited by the Order creates a system of suppression as hostile to the First Amendment's core protections as can be imagined.

16. EO 13950 is, therefore, in clear violation of the First and Fifth Amendments to the United States Constitution, resulting in serious and irreparable injury to Plaintiffs National Urban League and National Fair Housing Alliance, as well as the Class.

PARTIES

17. The National Urban League (or "NUL") is a 501(c)(3) non-profit corporation headquartered in New York, New York. As a historic civil rights organization founded in 1910, NUL's mission is to collaborate with community leaders, policymakers and other partners to improve the standards of living for the Black community and other underserved groups across

America. The NUL has 90 affiliates serving 300 communities across 36 states and the District of Columbia. NUL works to spearhead and advocate for public policies that can close the equality gap, and NUL's local affiliates provide direct services that improve the lives of Americans in their communities. NUL has been, is and seeks to be in the future a federal contractor and federal grant recipient.

18. The National Fair Housing Alliance (or "NFHA") is a 501(c)(3) non-profit corporation headquartered in Washington, D.C. NFHA and its operating members aim to eliminate housing discrimination and ensure equal housing opportunities to all people through education, outreach, membership service, policy initiatives, consulting services, community development, advocacy and enforcement. The NFHA's members include over 200 private, non-profit fair housing organizations, state and local civil rights agencies and individuals across the United States. NFHA has over 70 operating member organizations nationwide that support fair housing work in their regions in 29 states and the District of Columbia. NFHA focuses on a variety of matters, including policy initiatives, research, education and outreach, and the operating members of the NFHA provide direct services to victims of housing discrimination. NFHA has been, is and seeks to be in the future a federal contractor and federal grant recipient.

19. Defendant Donald J. Trump is the President of the United States. He is sued in his official capacity. In that capacity, he issued the EO 13950 challenged in this lawsuit.

20. Eugene Scalia is the United States Secretary of Labor. He is sued in his official capacity.

21. EO 13950 directs The United States Department of Labor, through the Office of Federal Contract Compliance Programs (or "OFCCP"), to establish a hotline and investigate complaints received under the order alleging that a Federal contractor or grantee is utilizing

training programs in violation the Order. EO 13950 Sec. 4(b). The Department of Labor is instructed to “take appropriate enforcement action and provide remedial relief, as appropriate.” *Id.*

JURISDICTION AND VENUE

22. The Court has subject matter jurisdiction under 28 U.S.C. § 1331 (federal question) because this action arises under the Constitution and the laws of the United States.

23. Venue is proper in this District under 28 U.S.C. § 1391(e) because plaintiff National Fair Housing Alliance resides within this District and/or because each Defendant is an agency of the United States or an officer or employee of the United States or any agency thereof acting and sued in their official capacities, at least one Defendant resides in this District, and a substantial part of the events or omissions giving rise to the claim occurred in this District.

24. The Court is authorized to award the requested declaratory and injunctive relief under 28 U.S.C. §§ 2201-2202 (Declaratory Judgment Act).

FACTUAL ALLEGATIONS

I. EO 13950 PROHIBITS AND CENSORS PROTECTED SPEECH.

A. The Text of EO 13950 Demonstrates Its Purpose to Prohibit, Censor, and Chill Speech and Viewpoints with Which the Trump Administration Disagrees.

25. On September 22, 2020, President Trump issued EO 13950, which prohibits the use of, or instruction on, certain defined “divisive concepts” by, *inter alia*, federal contractors and their subcontractors and vendors and federal grant recipients, including diversity or inclusion training programs in their workplaces (“Protected Speech”).

26. The very text of the Order confirms that its purpose is not to combat unlawful stereotyping, but to prohibit private entities’ expression of views on race, sex, and gender that take

into account the history and persistent discrimination of people of color, women, and the LGBTQ community in order to foster a diverse and inclusive workplace that values all employees.

27. EO 13950 imposes the inaccurate and ahistorical viewpoints of the Trump Administration on federal contractors and grantees simply because President Trump disagrees with the Protected Speech.

28. Among other things, EO 13950 takes exception to “people” advancing a “vision of America” that takes into account “collective social and political identities.” EO 13950 Sec. 1. The Order objects to an “ideology” that is grounded in particular portrayals of “our country’s history and its role in the world.” *Id.*

29. EO 13950 bans discussions of inequality grounded in the context of our Nation’s history and the lived experiences of those who have been most marginalized and discriminated against. The Order presents an ahistorical and counterfactual narrative that prohibits consideration of the structural barriers rooted in race and gender discrimination, thereby reinforcing and cementing existing inequalities into a permanent status quo.

30. EO 13950 restricts Protected Speech by proscribing the teaching of “divisive concepts” defined to include vague and subjective categories of speech that might cause an individual to feel “discomfort, guilt, anguish, or any other form of psychological distress on account of his or her race or sex” based on fact-based discussions about structural inequalities. *Id.* at Sec. 2(a).

31. To effectuate its categorical ban on the Protected Speech, EO 13950 requires government contracting agencies to place the following restrictions on any contractors they employ:

The contractor shall not use any workplace training that inculcates in its employees any form of race or sex stereotyping or any form of

race or sex scapegoating, including the concepts that (a) one race or sex is inherently superior to another race or sex; (b) an individual, by virtue of his or her race or sex, is inherently racist, sexist, or oppressive, whether consciously or unconsciously; (c) an individual should be discriminated against or receive adverse treatment solely or partly because of his or her race or sex; (d) members of one race or sex cannot and should not attempt to treat others without respect to race or sex; (e) an individual's moral character is necessarily determined by his or her race or sex; (f) an individual, by virtue of his or her race or sex, bears responsibility for actions committed in the past by other members of the same race or sex; (g) any individual should feel discomfort, guilt, anguish, or any other form of psychological distress on account of his or her race or sex; or (h) meritocracy or traits such as a hard work ethic are racist or sexist, or were created by a particular race to oppress another race.

Id. at Sec. 4.

32. Thus, for example, EO 13950 prohibits workplace training that discusses implicit biases and the collective responsibility of people of all races and sexes to counteract implicit biases, eradicate systemic discrimination, and ensure a hostility-free work environment.

33. In short, EO 13950 prohibits any federal contractor from engaging in speech, including the provision of certain training to its employees, that may foster belief in certain concepts that President Trump has deemed divisive, but which are widely-accepted, historically-based concepts that have been used for years in trainings and programs across the country in corporate, public sector, and educational settings.

34. If a contractor fails to comply with the Order, their contract “may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts.” EO 13950 Sec. 4(a)(3). The contractor may also be subjected to sanctions as authorized in Executive Order 11246, such as publication of the contractors’ names or recommendation that EEOC institute proceedings against the contractor under Title VII of the Civil Rights Act of 1964. *Id.* (citing Exec. Order No. 11,246 (Sept. 24, 1965), as amended by Exec. Order 12,086, 43 Fed. Reg. 46501 (Oct. 5, 1978)).

35. EO 13950 sets forth similar restrictions for federal grant recipients. Under the Order, the heads of all government agencies must “identify programs for which the agency may, as a condition of receiving such a grant, require the recipient to certify that it will not use Federal funds to promote the concepts [(a) through (h) described above],” and they must submit this list to the Director of the Office of Management and Budget (or “OMB”) within sixty days. EO 13950 Sec. 5.

36. EO 13950 also threatens the prospect of enforcement against those who express viewpoints that the Trump Administration disfavors. Specifically, the Order directs the Attorney General to assess the extent to which “workplace training that teaches the divisive concepts” may contribute to a hostile work environment and give rise to liability under Title VII of the Civil Rights Act of 1964.

37. EO 13950 further permits contractors who become involved in, or are threatened with, litigation with a subcontractor or vendor as a result of compliance with EO 13950 to request that the United States enter the litigation to protect the interest of the United States. EO 13950 Sec. 4(a)(4).

B. Events Before and After President Trump Issued EO 13950 Illuminate the Administration’s Intent to Silence Viewpoints on Race and Gender with Which the Trump Administration Disagrees.

38. The sequence of events leading up to the issuance of EO 13950 indicates that the Order was part of a reactionary effort by the Trump Administration to use the power of the federal government to force private entities to adopt its own narrative that denies or maligns any acknowledgement of the enduring consequences of slavery and the subsequent subjugation of Black people and other people of color in the United States.

39. On June 26, 2020, during the aftermath of George Floyd’s killing and in response to protests against monuments of men who enslaved Black people,¹ President Trump issued an Executive Order ensuring that any person or group that destroyed or vandalized a monument, memorial, or statue, would be prosecuted to the fullest extent, authorizing a penalty of up to ten years imprisonment for willful injury of Federal property. Exec. Order No. 13933, 85 C.F.R. 40081 (2020).

40. On July 3, 2020, in further response to protests against monuments of men who enslaved Black people, President Trump signed an Executive Order to re-erect monuments of these men in a National Garden of American Heroes. Exec. Order No. 13934, 85 C.F.R. 41165 (2020).

41. On August 12, 2020, Christopher F. Rufo, a director at the conservative think tank Discovery Institute, tweeted that Sandia National Laboratories hosted a mandatory training called “White Men’s Caucus on Eliminating Racism, Sexism, and Homophobia in Organizations.”² Mr. Rufo described this training as “a 3-day reeducation camp for ‘white-males,’ with the goal of exposing their ‘white privilege’ and deconstructing ‘white male culture.’” He then proceeded to post documents from what he described as “the race-segregated, taxpayer-funded session.”³ The next day, Mr. Rufo tweeted an update that “multiple congressional and White House officials ha[d] reached out to [him] about Sandia Lab’s white male reeducation camp.”⁴ That same day, Mr. Rufo appeared on *Tucker Carlson Tonight*, a program on the Fox News Network, and described

¹ Alan Taylor, *The Statues Brought Down Since the George Floyd Protests Began*, THE ATLANTIC (Jul. 2, 2020), <https://www.theatlantic.com/photo/2020/07/photos-statues-removed-george-floyd-protests-began/613774/>.

² Christopher F. Rufo (@realchrisrufo), TWITTER (Aug. 12, 2020, 1:40 PM), <https://twitter.com/realchrisrufo/status/1293603172842221570>.

³ *Id.*

⁴ Christopher F. Rufo (@realchrisrufo), TWITTER (Aug. 13, 2020, 8:50AM), <https://twitter.com/realchrisrufo/status/1293892725683568641>.

the Sandia Labs trainings as “a mandatory program for white male executives where they were supposed to essentially break down their white male identity and confess their sins to diversity trainers.”⁵

42. On September 1, 2020, Mr. Rufo returned to *Tucker Carlson Tonight* and described his new investigation into a Treasury Department diversity training, which “told Treasury employees that America is a fundamentally white supremacist country . . . [a]sking them to accept all of the baggage that comes with this reducible essence of whiteness.”⁶ Mr. Rufo further revealed “[t]he FBI is now holding weekly sessions on intersectionality, which is a hard-Left academic theory . . . with the white, straight male being at the very top of this pyramid of evil.”⁷ On Twitter, Mr. Rufo called on President Trump to “immediately issue an executive order abolishing critical race theory from the federal government.”⁸

43. Just three days later, on September 4, 2020, OMB Director Russell Vought released a memorandum that ended “agency spending related to any training on ‘critical race theory’ ‘white privilege, ‘or any other training or propaganda effort that teaches or suggests either (1) that the United States is an inherently racist or evil country or (2) that any race or ethnicity is inherently racist or evil.” Off. of Mgmt. & Budget, Exec. Off. of the President, Memorandum for the Heads of Executive Departments and Agencies No. M-20-34, *Training in the Federal Government* (Sept. 4, 2020). Director Vought announced the Administration’s measures “to halt critical race

⁵ Christopher Rufo, TUCKER CARLSON TONIGHT, FOX NEWS (Aug. 13, 2020), <https://www.foxnews.com/us/chris-rufo-one-man-war-race-theory>.

⁶ Christopher Rufo, TUCKER CARLSON TONIGHT, FOX NEWS (Sept. 1, 2020), <https://www.youtube.com/watch?v=rBXRdWfIV7M>.

⁷ *Id.*

⁸ Christopher F. Rufo (@realchrisrufo), TWITTER (Sept. 1, 2020, 10:31 PM), <https://twitter.com/realchrisrufo/status/1300984639108968449?s=20>.

theory trainings immediately” on Twitter.⁹ Director Vought described Critical Race Theory trainings as “indoctrination trainings that sow division and racism[.]”¹⁰

44. On September 5, 2020, a day after OMB’s Memorandum issued, President Trump tweeted that “Critical Race Theory” was a “sickness that cannot be allowed to continue” and directed people to “report any sightings so we can quickly extinguish!”¹¹ The President’s tweet linked to a Breitbart article entitled “Trump Orders Purge of ‘Critical Race Theory’ from Federal Agencies,” which described Critical Race Theory as a “leftist, racist doctrine that forms the intellectual underpinnings of Black Lives Matter, Antifa, and other radical organizations currently engaged in unrest on America’s streets.”¹²

45. On September 15, 2020, Director Vought responded to Mr. Rufo’s tweet about a scheduled CDC implicit bias training. Director Vought tweeted that the training had been “cancelled immediately,” “per @POTUS’s directive.” The training reportedly planned to “‘examine the mechanisms of systemic racism’ and address ‘[w]hite supremacist ideology.’”¹³

⁹ Russel Vought (@RussVought45), TWITTER (Sept. 4, 2020, 7:57 PM), <https://twitter.com/RussVought45/status/1302033078848753665>.

¹⁰ Russ Vought (@RussVought45), TWITTER (Sept. 4, 2020, 7:57 PM), <https://twitter.com/RussVought45/status/1302033078848753665>.

¹¹ Donald J. Trump (@realDonaldTrump), TWITTER (Sept. 5, 2020, 7:52 AM), <https://twitter.com/realDonaldTrump/status/1302212909808971776>.

¹² Id.; Allum Bokhari, Party’s Over: Trump Orders Purge ‘Critical Race Theory’ From Federal Agencies, Breitbart, (September 4, 2020), <https://www.breitbart.com/tech/2020/09/04/partys-over-trump-orders-purge-of-critical-race-theory-from-federal-agencies/>.

¹³ Russell Vought (@RussVought45), TWITTER (Sept. 15, 2020, 11:08 AM), <https://twitter.com/RussVought45/status/1305886092361715713>.

That same day, Director Vought was reported as describing diversity trainings that include Critical Race Theory as “problematic and un-American.”¹⁴

46. On September 17, 2020, President Trump hosted the inaugural White House Conference on American History, where he maligned Critical Race Theory and *The 1619 Project*—an historical account of slavery in America by leading journalists published in the New York Times in 2019—as “crusade[s] against American history,” “toxic propaganda,” and “ideological poison, that, if not removed [would] . . . destroy our country.”¹⁵ The President explained that this was why he “banned trainings in this prejudiced ideology from the federal government and banned it in the strongest manner possible.” President Trump also announced that he would soon establish the 1776 Commission by Executive Order to “promote patriotic education.”¹⁶

47. Three days later, on September 22, 2020, President Trump issued EO 13950. President Trump explained in a tweet: “A few weeks ago, I BANNED efforts to indoctrinate government employees with divisive and harmful sex and race-based ideologies. Today, I’ve expanded that ban to people and companies that do business . . .¹⁷ . . . with our Country, the United States Military, Government Contractors, and Grantees. Americans should be taught to take

¹⁴ OMB Director Russell Vought on Defunding Critical Race Theory in Federal Agencies, *The Federalist* (Sept. 15, 2020), <https://thefederalist.com/2020/09/15/omb-director-russell-vought-on-defunding-critical-race-theory-in-federal-agencies/>.

¹⁵ Remarks by President Trump at the White House Conference on American History, National Archives Museum (Sept. 17, 2020), <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-white-house-conference-american-history/>.

¹⁶ *Id.*

¹⁷ Donald J. Trump (@realDonaldTrump), TWITTER (Sept. 22, 2020, 6:53 PM), <https://twitter.com/realDonaldTrump/status/1308539918075883523>.

PRIDE in our Great Country, and if you don't, there's nothing in it for you!"¹⁸ The White House announced the EO as one part of several previous executive actions intended to "Defend[] Our History."¹⁹ And Director Vought described it as "another important step that builds off [President Trump's] directive to agencies to stop trainings that push a radical anti-American agenda."²⁰

48. On September 23, 2020, Director Vought appeared on Fox News and further explained:

"[Critical Race Theory] is a theory that emanates from left-wing universities across the country that suggests that our institutions are fundamentally racist and need to be brought down. And it reflects itself in two primary thoughts. One is that the country itself, the founding, was flawed and that this country is racist to its core. And number two that all white people are fundamentally racist and that is just itself discrimination on the basis of race. . . . *And obviously we believe something different than that. . . . This is a specific effort to go after a specific leftist theory that we think is un-American.*"²¹

49. After the issuance of the EO and the preceding OMB Memorandum, the sequence of trainings cancelled by the Administration revealed a pattern of targeting trainings that discussed Critical Race Theory and related concepts intended to benefit people of color.

50. The same day EO 13950 was issued, Director Vought replied to a tweet by Mr. Rufo accusing the State Department, Environmental Protection Agency, and the Department

¹⁸ Donald J. Trump (@realDonaldTrump), TWITTER (Sept. 22, 2020, 6:53 PM), <https://twitter.com/realDonaldTrump/status/1308539921829781504>.

¹⁹ The White House, Law & Justice Briefing Statement, *President Trump is Fighting Harmful Ideologies that Cause Division in Our Federal Workplaces* (Sept. 22, 2020), <https://www.whitehouse.gov/briefings-statements/president-trump-fighting-harmful-ideologies-cause-division-federal-workplaces/>.

²⁰ Russ Vought (@RussVought45), TWITTER (Sept. 22, 2020, 7:10 PM), <https://twitter.com/RussVought45/status/1308544280701612034>.

²¹ Russ Vought (@RussVought45), TWITTER (Sept. 23, 2020, 5:22 PM), <https://twitter.com/RussVought45/status/1308879418891345920>.

of Veterans Affairs of hosting trainings about “critical race theory,” that allegedly violated the Order by “pressuring staff to denounce their ‘white privilege,’ become ‘co-resistors’ against ‘systemic racism’ and sign ‘equality pledges.’” Director Vought responded that all three trainings were cancelled, despite there being no indication in the tweet that these trainings violated the text of EO 13950.²²

51. On October 8, 2020, in a sweeping action expanding the reach of EO 13950’s repression, Assistant Attorney General Lee Lofthus ordered the Department of Justice leaders to suspend not only diversity and inclusion trainings, but also any related “programs, activities, and events.”²³

52. A week later, during the first presidential debate, when asked why he ended “racial sensitivity training that addresses white privilege or Critical Race Theory,” President Trump responded, “I ended it because it’s racist ... [t]hey were teaching people to hate our country, and I’m not going to allow that to happen.”²⁴

53. The sequence of events leading to President Trump’s issuance of EO 13950, as well as his own statements, reveal the order’s clear purpose to restrict, if not, prohibit the expression of viewpoints with which he disagrees or, otherwise, deems “un-American.”

²² Russ Vought (@RussVought45), TWITTER (Sept. 22, 2020, 6:34 PM), <https://twitter.com/RussVought45/status/1308535115006570498>.

²³ Katie Benner, Justice Dept. Suspends All Diversity and Inclusion Training for Staff, N.Y. TIMES (Oct. 9, 2020), <https://www.nytimes.com/2020/10/09/us/politics/justice-department-diversity-training.html>.

²⁴ Donald J. Trump, *WATCH: Biden urges unity to ‘defeat racism’; Trump decries racial sensitivity training*, First Presidential Debate, YOUTUBE (Sept. 29, 2020), <https://www.youtube.com/watch?v=pqGyzLjXfjo> (footage from the First Presidential Debate).

C. EO 13950 Fails to Provide Fair Notice of What Conduct and Content Is Actually Prohibited.

54. Under the terms of EO 13950, there is no objective way to determine which activities are permitted and which are prohibited, creating a broad chilling effect and inviting unpredictable, uneven, and potentially selective enforcement.

55. For example, EO 13950 prohibits employers from holding “workplace training” that “inculcates” certain “divisive concepts” in employees. EO 13950 Sec. 4(a)(1). However, the Order never defines “workplace training,” which can occur in many contexts and for many reasons—such as an employee’s onboarding, part of the promotion process, ongoing professional education, or an effort to address workplace conduct issues.

56. In addition, the Order does not explain, or otherwise define, the prohibited act of “inculcat[ing].” There are no criteria in the Order for a federal contractor to understand whether training needs to reach a certain level of repetition, admonition, and insistence to be deemed to “inculcate[e]” employees or whether, for example, a single training that references a so-called “divisive concept” is enough to trigger the Order.²⁵

57. Nor are the prohibited “divisive concepts” sufficiently defined. For example, the Order prohibits training that “inculcates” the concept that “the United States is fundamentally racist or sexist.” But there is no description of what “fundamentally” racist or sexist means. Under the Order’s prohibitions, it is unclear if explaining this historical context (*e.g.*, discussing the Nation’s history of slavery, the Jim Crow laws, the Civil Rights Movement, the Women’s Liberation Movement, the Stonewall uprising, mass incarceration, pay equity or other topics

²⁵ Inculcate, *v.*, OXFORD ENGLISH DICTIONARY ONLINE (last visited October 28, 2020), www.oed.com/view/Entry/94107 (defining “inculcate” as “[t]o endeavor to force (a thing) into or impress (it) on the mind of another by emphatic admonition, or by persistent repetition . . . to teach forcibly”).

related to racial injustice, gender discrimination or inequity) and the foundational ways this history shapes present-day manifestations of discrimination and biases, would be considered an assertion that the United States is “fundamentally” racist or sexist.

58. The Order also prohibits training that “inculcates” the view that “members of one race or sex cannot and should not attempt to treat others without respect to race or sex.” EO 13950 Sec. 4(a)(1). But the Order provides no explanation for what it means “to treat others without respect to race or sex,” and the prohibition inexplicably flips basic anti-discrimination principles on their head. Indeed Title VII, the ADEA, and the Pregnancy Discrimination Act all expressly prohibit workplace conduct and decisions that perpetuate gender and age stereotypes under the guise of “protecting” or showing “respect” for the elderly, women, or pregnant people.

59. Employees’ words, gestures, jokes, or acts can be hostile and discriminatory when viewed in light of the “totality of the circumstances,” which may necessarily include “race or sex.” *See, e.g., Harris v. Forklift Sys.*, 510 U.S. 17, 23 (1993). But contrary to well-established doctrine under Title VII, the Order suggests that considerations of race and sex should *not* factor into an employee’s behavior—*i.e.*, that employees cannot be trained in a manner that restricts them from engaging in conduct “without respect to race or sex.” Because of the Order’s vague language, it is unclear what anti-discrimination workplace training comports with the Order’s restrictions.

60. The Order’s prohibition on inculcating “discomfort” and “guilt” is similarly inscrutable. The Order apparently prohibits training that includes the view that “any individual should feel discomfort, guilt, anguish, or any other form of psychological distress on account of his or her race or sex.” EO 13950 Sec. 4(a)(1). However, the Order leaves unclear whether any training that leads to feelings of discomfort by virtue of the nature of the subject matter is prohibited.

61. The Order also prohibits the concept that “meritocracy or traits such as a hard work ethic are racist or sexist.” EC 13950 Sec. 4(a)(1). Purported objective measures of merit, such as tests and evaluations, have been used historically to exclude qualified members of protected groups from employment opportunities. The Supreme Court has recognized that the disproportionate impact of these tools of purported meritocracy can undermine equality and fairness in the workplace and can, in fact, violate federal law. *See Griggs v. Duke Power Co.*, 401 U.S. 424, 430 (1971) (“[P]ractices, procedures, or tests neutral on their face, and even neutral in terms of intent, cannot be maintained if they operate to ‘freeze’ the status quo of prior discriminatory employment practices.”). Under the Order, a reasonable employer has no way of knowing whether a seemingly appropriate discussion about the interplay between purportedly “meritocratic” standards and discriminatory impact—even a faithful explanation of the law—may be prohibited “inculcation” of the view of “meritocracy” as “racist.”

62. Nor does the Order provide objective standards for enforcement. There is no basis to determine whether any particular training program that discusses race relations, implicit bias, the historical foundations and context of discrimination, and racial sensitivity, would comply or violate the Order. The Order gives the Department of Labor (or “DOL”) unfettered discretion in enforcing the Order’s workplace training prohibitions.

63. The Order further states that grant recipients may need to certify that they will not use federal funds to “promote” the same vague and ill-defined concepts that are banned for federal contractors. EO 13950 Sec. 5. As with federal contractors, federal grant recipients are unable to discern what precisely would be a prohibited use of federal funds under EO 13950, thus risking their eligibility for federal grants.

64. In a letter to President Trump, dated October 8, 2020, the American Council on Education wrote that the Order “is creating concern, confusion, and uncertainty for federal contractors and grant recipients across the country.”²⁶ Among other issues, the Council noted that the Order “contains many ambiguities and gray areas”—including the definition of “divisive concepts”—“which means potentially substantial penalties for federal contractors and grantees will be based upon the subjective determinations of federal officials.”²⁷

65. On October 15, 2020 more than 150 businesses and nonprofit groups, including the U.S. Chamber of Commerce, wrote a letter to President Trump, stating that “[a]s currently written[,] . . . the E.O. will create confusion and uncertainty, lead to non-meritorious investigations, and hinder the ability of employers to implement critical programs to promote diversity and combat discrimination in the workplace.”²⁸ The groups noted that the definition of “divisive concepts” leaves “considerable ambiguity as to what content would not be permitted in diversity and inclusiveness . . . training” and “creates many gray areas and will likely result in multiple interpretations.”²⁹

66. In addition, Paulette Granberry Russell, the President of the National Association of Diversity Officers in Higher Education, has said that the Order relies on “vague” terms,

²⁶ Letter from Ted Mitchell, President, Am. Council on Educ., to President Donald J. Trump (Oct. 8, 2020), <https://www.acenet.edu/Documents/Letter-White-House-Race-and-Sex-Stereotyping-Executive-Order-100820.pdf>.

²⁷ See *id.*

²⁸ Coalition Letter on Executive Order 13950, U.S. Chamber of Com. (Oct. 15, 2020), <https://www.uschamber.com/letters-congress/coalition-letter-executive-order-13950>.

²⁹ See *id.*

including “race or sex stereotyping,” which the Order does not “concret[e]ly define.”³⁰ Likewise, the National Council of Nonprofits has noted that terms like “inculcates” and “workplace training” are vague and ambiguous, and the divisive concepts themselves are unclear.³¹

D. Other Executive Branch Guidance and Statements Have Only Added to the Lack of Clarity

67. On September 28, 2020, OMB published a Memorandum entitled “Ending Employee Trainings that Use Divisive Propaganda to Undermine the Principle of Fair and Equal Treatment for All” (Memorandum), which gave additional content to EO 13950’s directives. Off. of Mgmt. & Budget, Exec. Off. of the President, OMB M-20-37 (Sept. 28, 2020). The Memorandum expanded on the Order by highlighting terms, such as “critical race theory,” “white privilege,” “intersectionality,” “systemic racism,” “positionality,” “racial humility,” and “unconscious bias,” as key to identifying the targeted “divisive” diversity training programs. *Id.* at 2.

68. This Memorandum singled out specific terms and subject matter, such as critical race theory or white privilege, as targets of the Order even though they were not explicitly included in the definition of “divisive concepts” proscribed by the text of the Order.

³⁰ See Jeremy Bauer-Wolf, *3 colleges pause diversity efforts over Trump executive order*, EDUCATION DIVE (Oct. 9, 2020, 2:35 PM), <https://www.educationdive.com/news/3-colleges-pause-diversity-efforts-over-trump-executive-order/586593/>.

³¹ See Tim Delaney and David L. Thompson, *How Nonprofits Can Stop Trump’s Effort to Roll Back Diversity Training*, NONPROFIT QUARTERLY (Oct. 5, 2020), <https://nonprofitquarterly.org/how-nonprofits-can-stop-trumps-effort-to-roll-back-diversity-training/>.

69. On October 7, 2020, OFCCP released nine frequently asked questions addressing the EO.³² However, this guidance further contributed to the uncertainty surrounding the EO's enforcement. Regarding the EO's date of effectiveness, the OFCCP claimed that it could "investigate claims of sex and race stereotyping" now "pursuant to its existing authority under Executive Order 11246." However, OFCCP also instructed that EO 13950 applies to contracts entered into or modified after November 21, 2020.

70. On October 22, 2020, OFCCP published, in the Federal Register, a request for information ("RFI") pursuant to EO 13950, seeking "comments, information, and materials from Federal contractors, Federal subcontractors, and employees of Federal contractors and subcontractors concerning workplace trainings involving prohibited race or sex stereotyping or scapegoating."³³ According to the RFI, the president "directed that the request for information should request copies of any training, workshop, or similar programming having to do with diversity and inclusion as well as information about the duration, frequency, and expense of such activities."³⁴

71. These interpretive documents from the federal government only reinforce how vague the terms of EO 13950 are and how expansively they can be interpreted for purposes of enforcement.

³² Executive Order 13950 – Combatting Race and Sex Stereotyping, Office of Federal Compliance Programs (Oct. 7, 2020), <https://www.dol.gov/agencies/ofccp/faqs/executive-order-13950>.

³³ Request for Information; Race and Sex Stereotyping and Scapegoating, 85 Fed. Reg. 67,375-67,378 (Oct. 22, 2020).

³⁴ *Id.*

E. EO 13950 Departs from Normal Procedures.

72. Presidents historically follow specific procedural steps for enacting executive orders, which ensure that they are properly reviewed, vetted, and implemented. One example of this procedure can be found in the provisions of 1 CFR § 19.2—“Routing and approval of drafts”—which lay out the procedure for review by the Office of Management and Budget, Attorney General, and Office of the Federal Register, in order to ensure legality and language, prior to submission to the President for signature. Other procedures ensure that the executive order is properly implemented.

73. These procedures have historically been found within the executive order itself with provisions for amendment to reconcile the executive order with past orders, as well as instructions to the relevant cabinet Secretary to draft rules and regulations for implementation. Finally, executive orders are, historically, submitted to the Federal Acquisition Regulatory Council and Office of Federal Contract Compliance Programs for implementation onto the Federal Register and insertion into federal government contracts.

74. EO 13950 reflects a radical departure from other executive orders and from these usual procedures. For example, unlike recent executive orders related to the federal workplace, such as, President Obama’s Executive Order 13672 (amending two prior executive orders to extend prohibitions against discrimination to also prohibit discrimination targeting sexual orientation or gender identity) and Executive Order 13665 (prohibiting retaliation for inquiring about, discussing, or disclosing compensation information), EO 13950 lacks any provision that purports to amend Executive Order 11246 (1965), which already addresses anti-discrimination requirements for federal contractors. Instead, EO 13950 excludes all contracts exempted by Executive Order 11246, section 204, and mandates that all federal government contracting agencies shall include specified contract language set forth in the Order. EO 13950 Sec. 4(a).

75. In addition, unlike prior workplace discrimination-related executive orders, the Order does not instruct the Secretary of Labor to prepare regulations to implement the requirements of the Order. Instead, the Order merely instructs the Department of Labor to establish a hotline and investigate complaints of purported violations of the Order. EO 13950 Sec. 4(b).

76. In another departure from the ordinary procedural attributes of executive orders concerning workplace discrimination, the Order lacks any mechanism for rulemaking by the Federal Acquisition Regulatory Council that would permit implementation and insertion of specific language into contracts by the OFCCP. Instead, the Order purports to require “the Director of OFCCP [to] publish in the Federal Register a request for information seeking information from Federal contractors, Federal subcontractors, and employees [thereof] regarding the training, workshops, or similar programming provided to employees” and, as described, mandates that all federal government contracting agencies include specified contract language set forth in the Order. EO 13950 Sec. 4.

II. THE PROTECTED SPEECH THAT EO 13950 CENSORS AND CHILLS IS OF IMMENSE PUBLIC CONCERN AND A MATTER OF PUBLIC WELFARE.

A. Discussions to Support and Advance Workplace Diversity, Inclusion, and Equality Are Important Speech Due to the Persistence of Employment Discrimination.

77. Of the many ways that racism has blighted our democracy, economic and employment-based injustice and exclusion rank among the most pervasive. Slavery involved the theft of Black labor. Even in the non-slave states, Black people in the antebellum era were relegated to menial employment positions. After the Civil War, Black Codes, the Convict Lease system, and a veritable reign of terror by white supremacist groups in the South was motivated, in part, by a desire to ensure a racialized employment hierarchy that forced Black people into the lowest status employment sectors.

78. For most of the twentieth century, state-sanctioned segregation in education and employment ensured that most Black people were maintained in low-paying jobs of domestic or agricultural work, and blue-collar factory and plant jobs in the South included strict racial hierarchies in which Black workers were held to the lowest rungs. The federal government itself practiced this racial hierarchy and, in the Woodrow Wilson administration, segregated or purged the few Black employees in low-level positions from federal service.³⁵ By the time that Title VII of the Civil Rights Act of 1964 was passed into law, employers regularly and overtly discriminated against Black employees in hiring, work assignments, and compensation.

79. While Title VII achieved much progress in equalizing employment opportunities, the historic subjugation of Black people and other people of color persists in implicit biases and structural inequalities that have led to their continued underrepresentation at the highest levels of corporate leadership.

80. For example, although Black people represent 13.4 percent of the U.S. population, within U.S. financial institutions, they account for only 2.4 percent of executive committee members, only 1.4 percent of managing directors, and only 1.4 percent of senior portfolio managers.³⁶ Black people represent just 1.9 percent of technology executives and 5.3 percent of technology professionals.³⁷

³⁵ Judson MacLaury, *The Federal Government and Negro Workers Under President, U.S. Dep't of Labor Woodrow Wilson*, <https://www.dol.gov/general/aboutdol/history/shfgpr00>; Dick Lehr, *The Racist Legacy of Woodrow Wilson*, *The Atlantic* (Nov. 27, 2015), <https://www.theatlantic.com/politics/archive/2015/11/wilson-legacy-racism/417549/>.

³⁶ Laura Morgan Roberts & Anthony J. Mayo, *Toward A Racially Just Workplace*, *Harv. Bus. Rev.* (Nov. 2019), <https://hbr.org/cover-story/2019/11/toward-a-racially-just-workplace>.

³⁷ *Id.*

81. Moreover, Asian Americans make up five percent of the U.S. population, but account for only 1.4% of *Fortune* 500 CEOs and 1.9% of corporate officers overall.³⁸ And more than one-third of Latinx people report having experienced discrimination in terms of either their job applications, compensation, or consideration for promotions for jobs they already have.³⁹

82. Studies indicate that the underrepresentation of people of color in the private and public sector is not an issue of merit, but rather, opportunity. For example, a Harvard Business School study found that people of color had to manage their careers more strategically than their white peers and were required to prove greater competence than their white peers before securing the same promotions.⁴⁰ Research by the Deans of Cornell University's Dyson School and Emory University's Goizueta Business School found that Black leaders in business are disproportionately given assignments with a high risk of failure.⁴¹ Another study of Black leaders found that, because of stereotyping, they were evaluated negatively regardless of their performance.⁴²

83. In addition to racial discrimination and harassment in the workplace, sexual harassment, gender discrimination, and discrimination on the basis of sexual orientation and gender identity are disconcertingly prevalent.

³⁸ Liza Mundy, *Cracking the Bamboo Ceiling*, THE ATLANTIC (Nov. 2014), <https://www.theatlantic.com/magazine/archive/2014/11/cracking-the-bamboo-ceiling/380800/>.

³⁹ Press Release, Harv. Sch. of Pub. Health, *Poll finds one-third of Latinos say they have experienced discrimination in their jobs and when seeking housing* (Nov. 1, 2017), <https://www.hsph.harvard.edu/news/press-releases/poll-latinos-discrimination/>.

⁴⁰ Roberts & Mayo, *Toward a Racially Just Workplace* (citing David A. Thomas & John J. Gabarro, *Breaking Through: The Making of Minority Executives in Corporate America* (1999)).

⁴¹ *Id.*

⁴² Andrew M. Carton & Ashleigh Shelby Rosette, Explaining Bias against Black Leaders: Integrating Theory on Information Processing and Goal-Based Stereotyping, 54 ACAD. OF MGMT. J., 1141, 1141 (2012).

84. In 2014, women who worked full time, year-round in the United States were paid only 79 cents for every dollar paid to their male counterparts.⁴³ This wage gap reflects a number of factors, including lower pay for women within the same employment positions, segregation of women into lower-paying jobs, bias against women caregivers as workers, and workplace policies that impose long-term economic penalties on workers who take time out of the workforce to care for their families.⁴⁴

85. Moreover, women—many of whom are supporting families—are over-represented in the low-wage workforce and comprise two-thirds of low-wage workers, despite making up slightly less than half of the workforce overall.⁴⁵

86. The intersectionality of race and gender exacerbates these dual biases for women of color. Nearly half of women in the low-wage workforce are women of color,⁴⁶ and women of color are disproportionately represented in the low-wage sector of the workforce.⁴⁷ For example, Black women are 6 percent of the overall workforce but their share of the low-wage workforce is

⁴³ See Nat'l Women's L. Ctr., Fact Sheet: FAQ About the Wage Gap 1 (Sept. 2015), https://nwlc.org/wp-content/uploads/2015/08/faq_about_the_wage_gap_9.23.15.pdf (comparing median earnings by women in full time, year round employment with median earnings by men in full time, year round employment).

⁴⁴ *Id.*

⁴⁵ See Anne Morrison & Katherine Gallagher Robbins, Nat'l Women's L. Ctr., *Women's Overrepresentation in Low-Wage Jobs* 1 (Oct. 2015), https://nwlc.org/wp-content/uploads/2015/08/chartbook_womens_overrepresentation_in_low-wage_jobs.pdf (defining low-wage jobs as those that typically pay \$10.50 per hour or less); Anne Morrison & Katherine Gallagher Robbins, Nat'l Women's L. Ctr., *The Women in the Low-Wage Workforce May Not Be Who You Think* 4 (Sept. 2015), https://nwlc.org/wp-content/uploads/2015/08/chartbook_women_in_the_low-wage_workforce_may_not_be_who_you_think.pdf.

⁴⁶ *Id.*

⁴⁷ Morrison & Robbins, *Women's Overrepresentation in Low-Wage Jobs*, at 6.

nearly double that at 11 percent.⁴⁸ Black and Hispanic women experience greater wage gaps—60 cents and 55 cents for every dollar paid to white, non-Hispanic men, respectively—than their white, non-Hispanic counterparts.⁴⁹

87. LGBTQ persons of color also are more than twice as likely to have experienced discrimination as compared to their white peers. Whereas 13% of white LGBTQ persons report having experienced discrimination based on their LGBTQ status during the job-application process, that figure is 32% for LGBTQ people of color.⁵⁰ Similarly, 27% of LGBTQ persons of color state that they are afraid to take time off work to care for a loved one for fear it would reveal their LGBTQ status at work (compared to 16% of white LGBTQ employees).⁵¹

88. The rates of workplace discrimination against transgender people—including 26% reporting they have been fired based on anti-transgender bias and 50% who have been harassed on the job—are even higher for transgender people of color, who face “up to twice or three times the rates of various negative outcomes” as compared to white transgender employees.⁵²

⁴⁸ *Id.*

⁴⁹ See Nat’l Women’s L. Ctr., Fact Sheet: The Wage Gap Is Stagnant for Nearly a Decade 1-2 (Sept. 2016), <https://nwlc.org/wp-content/uploads/2016/09/Wage-Gap-Stagnant-2016-3.pdf>.

⁵⁰ Nat’l Pub. Radio, et al., *Discrimination in America: Experiences and Views of LGBTQ Americans* 11 (Nov. 2017), <https://legacy.npr.org/documents/2017/nov/npr-discrimination-lgbtq-final.pdf>.

⁵¹ Human Rights Campaign Foundation, *LGBTQ Working People of Color Need Paid Leave* 8 (May 2018), <https://hrc-prod-requests.s3-us-west-2.amazonaws.com/files/assets/resources/HRC-PaidLeave-POCReport-FINAL.pdf?mtime=20200713133946&focal=none>.

⁵² Jaime M. Grant et al., *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey* 3, 51 (2011) https://transequality.org/sites/default/files/docs/resources/NTDS_Report.pdf; see also, e.g., Nat’l Ctr. for Transgender Equality, *Issues: Non-Discrimination Laws*, <https://transequality.org/issues/non-discrimination-laws> (last visited June 28, 2019); M.V. Lee Badgett et al., Williams Institute, *Bias in the Workplace: Consistent Evidence of Sexual Orientation and Gender Identity Discrimination* 3 (June 2007),

B. Discussions About Implicit Bias, Systemic Discrimination, and Racial and Gender Privilege Are Important Speech of Public Concern and Debate, About Which President Trump Has Expressed Disagreement.

89. As demonstrated by hostile environments in the workplace and persistent disparities in access to opportunities, the lasting effects of race and sex discrimination are deep and widespread. Such discrimination, which was normalized for generations, continues to shape our perceptions and assumptions about individuals and groups based on their race, sex, gender identity, and/or sexual orientation, resulting in both explicit and implicit biases at an individual and systemic level.

90. According to Professor Jennifer Eberhardt, one of the most preeminent experts of implicit bias and the recipient of the MacArthur “genius” fellowship, “categorization is a fundamental tool that our brains are wired to use”; beliefs we have about categorized social groups are “stereotypes,” and the attitudes we have about them are “prejudice.”⁵³ “Whether bad or good, whether justified or unjustified, our beliefs and attitudes can become so strongly associated with the category that they are automatically triggered, affecting our behavior and decision making The process of making these connections is called bias.”⁵⁴

91. The explicit discrimination against people of color, women, and LGBTQ individuals was grounded upon—and has further generated—entrenched stereotypes that fuel the explicit and implicit biases that affect our interactions and decision making, resulting in significant

<https://williamsinstitute.law.ucla.edu/wp-content/uploads/Bias-Workplace-SOGI-Discrim-Jun-2007.pdf> (reporting similar evidence of pronounced discrimination against LGBTQ employees of color); M.V. Lee Badgett et al., Ctr. for Emp. Equal., *Evidence from the Frontlines on Sexual Orientation and Gender Identity Discrimination* (July 2018), <https://www.umass.edu/employmentequity/evidence-frontlines-sexual-orientation-and-gender-identity-discrimination> (same).

⁵³ Jennifer Eberhardt, *Biased: Uncovering the Hidden Prejudice That Shapes What We See, Think, and Do* 31 (2019).

⁵⁴ *Id.*

disparities and inequality today. For example, one of the strongest and most pervasive stereotypes in the United States is the strong association between Blackness and criminality, which has had dire consequences in the criminal justice system.⁵⁵

92. Ongoing implicit biases also have severe ramifications in the workplace. A well-known study of the U.S. labor market sent out thousands of identical resumes with names that signaled the race of the applicant as white or Black, resulting in applications with “Black-sounding names” to be 50% less likely to get a callback.⁵⁶ Even increasing the qualifications of the Black applicants did not help—they were still less likely to be called back than less-qualified white applicants.⁵⁷

93. Women likewise face implicit biases in the workplace, such as being considered ill-fitted for high-powered positions, either too masculine or too feminine in male-dominated fields, and conflicted between their professional commitment and motherhood.⁵⁸ And women of color experience the intersectionality of both race and gender bias—*i.e.*, needing to prove themselves as both women and people of color.⁵⁹

94. LGBTQ employees also suffer from implicit biases in the workplace. In a study by the Human Rights Campaign, one-in-five LGBTQ employees (compared to one in 24 non-LGBTQ employees) were told by coworkers to dress in a more masculine or feminine way.⁶⁰ Forty-six

⁵⁵ *Id.* at 6.

⁵⁶ *Id.* at 263-64.

⁵⁷ *Id.*

⁵⁸ Joan C. Williams, Double Jeopardy? An Empirical Study with Implications for the Debates over Implicit Bias and Intersectionality, 37 HARV. J. L. & GENDER 185, 189-93 (2014).

⁵⁹ *Id.* at 194.

⁶⁰ Human Rights Campaign, *Workplace Divided: Understanding the Climate for LGBTQ Workers Nationwide* 6 (2018), at

percent of non-LGBTQ workers state that they would not be very comfortable working with an LGBTQ colleague, and most of the discomfort stems from a desire not to hear about their LGBTQ colleagues' sex lives.⁶¹ And 46% of LGBTQ employees are still closeted at work.⁶² Intersectionalities with race and gender further exacerbate the implicit biases that LGBTQ employees confront.

95. Both explicit and implicit biases normalize conditions under which people of color, women, and LGBTQ people are underrepresented and undervalued. Thus, what may be perceived as natural, neutral, and objective is, to the contrary, a direct product of the legacy of discrimination that has become fully embedded in various aspects of our society, such as the educational system, the criminal justice system, housing, health care, and most certainly employment.

96. The absence of explicit forms of bias that are more easily identified and remedied within the contours of our anti-discrimination laws do not render more nuanced and structural inequalities any less harmful to the victims of such inequalities. It is in response to these structural inequalities that Critical Race Theory was born. Although Critical Race Theory is comprised of a wide variety of scholarship, it is “unified by two common interests”: (1) the pursuit of understanding how racial subordination originated and has been maintained in the United States, especially in relation to the legal system; and (2) a desire to change the legal system so that it no longer supports racial subordination.⁶³

https://assets2.hrc.org/files/assets/resources/AWorkplaceDivided-2018.pdf?_ga=2.11363569.430490975.1603766732-68969451.1603766732.

⁶¹ *Id.*

⁶² *Id.*

⁶³ Kimberlé Crenshaw, et al., *Critical Race Theory: The Key Writings That Formed the Movement* viii (The New Press, ed. 1995).

97. Although it largely resides within the field of legal academia, Critical Race Theory is an invaluable lens through which to understand how structural inequalities proliferate despite the Equal Protection Clause and civil rights and anti-discrimination laws. Moreover, the basic tenets of Critical Race Theory are very much aligned with the Black Lives Matter movement, which gained widespread support, including in the form of mass peaceful protests across the country and globe, following the police killing of George Floyd this past summer and has been the subject of popular discourse, as well as discussions in the workplace.

98. The mass protests against police violence in the Black community during the summer of 2020 have been widely reported as the largest movement in American history with dozens of millions of people of all races, both domestically and internationally, protesting against police violence and abuse against the Black community.⁶⁴ In one day alone—on June 6, 2020—about 500,000 people protested in 550 locations across the United States.⁶⁵

99. Support for eradicating anti-Black racism has increased significantly among multiple entities and across industries. Professional sports associations, such as the National Football League and NASCAR, that were previously reticent have publicly voiced their support for anti-racist efforts.⁶⁶

⁶⁴ Larry Buchanan, Quoc Trung Bui, and Jugal K. Patel, *Black Lives Matter May Be the Largest Movement in U.S. History*, N.Y. TIMES, July 3, 2020, <https://www.nytimes.com/interactive/2020/07/03/us/george-floyd-protests-crowd-size.html>.

⁶⁵ *Id.*

⁶⁶ Tonya Pendleton, *NASCAR Stands for 'Black Lives Matter' in Video*, THE GRIO, June 8, 2020, <https://thegrio.com/2020/06/08/nascar-black-lives-matter/>; Mark Maske and Adam Kilgore, *What Made Roger Goodell Say 'Black Lives Matter' and Where It Leaves the NFL*, WASH. POST, June 6, 2020, <https://www.washingtonpost.com/sports/2020/06/06/roger-goodell-black-lives-matter/>.

100. In July, several large banks spoke out against the Department of Housing and Urban Development’s decision to eviscerate the disparate impact standard under the Fair Housing Act, explaining that housing discrimination remains a reality for many Black Americans.⁶⁷ And numerous corporations have expressed support not only for racial justice protesters, but also for their own Black employees, by encouraging leadership to stand in solidarity with their Black friends and colleagues in the fight to eradicate racism.⁶⁸

101. Moreover, on June 4, 2020, all nine justices of the Washington State Supreme Court signed an open letter to the legal community in response to George Floyd’s death and the subsequent mass protests.⁶⁹ The letter recognized “the injustices faced by black Americans are not relics of the past Our institutions remain affected by the vestiges of slavery: Jim Crow laws that were never dismantled and racist court decisions that were never disavowed.”⁷⁰ The Justices further stated that “we must recognize that systemic racial injustice against black Americans is not an omnipresent specter that will inevitably persist. It is the collective product of each of our individual actions—every action, every day. It is only by carefully reflecting on our

⁶⁷ Joe Adler, *Big Banks Urge HUD to Shelve Redlining Plan. Small Banks Say Not So Fast*, AMERICAN BANKER, June 20, 2020, <https://www.americanbanker.com/news/big-banks-urge-hud-to-shelve-redlining-plan-small-banks-say-not-so-fast#:~:text=A%202015%20Supreme%20Court%20decision%20affirmed%20disparate%20impact%2C,should%20restrict%20how%20the%20legal%20doctrine%20is%20applied>

⁶⁸ Tiffany Hsu, *Corporate Voices Get Behind ‘Black Lives Matter’ Cause*, N.Y. TIMES, May 31, 2020, <https://www.nytimes.com/2020/05/31/business/media/companies-marketing-black-lives-matter-george-floyd.html>.

⁶⁹ The Supreme Court, State of Washington, *Open Letter to the Legal Community* (June 4, 2020), <http://www.courts.wa.gov/content/publicUpload/Supreme%20Court%20News/Judiciary%20Legal%20Community%20SIGNED%20060420.pdf>.

⁷⁰ *Id.*

actions, taking individual responsibility for them, and constantly striving for better that we can address the shameful legacy we inherit.”⁷¹

102. The effects of structural racism have also been revealed the COVID-19 pandemic. “Blacks, Latinos, and American Indians are experiencing hospitalizations at rates 4.5 to 5.5 times higher than non-Hispanic whites Hispanics and Native Americans are both dying about 1.5 times the rate of white people. And Black people are dying at 2.4 times the white rate.”⁷² Shockingly, the “mortality rates and life expectancy are far better for white Americans” during the COVID-19 pandemic “than they are for Black people during normal, non-pandemic years.”⁷³

103. Dr. Anthony Fauci, the foremost infectious disease expert in the United States and a member of the President’s Coronavirus Task Force, attributed these disparities to institutional racism that contributed to socioeconomic inequality. Oversight of the Trump Administration's Response to the COVID-19 Pandemic: Hearing Before the House Energy and Commerce Committee, 116 Cong. 56 (2020) (Unedited Hearing Transcript).

⁷¹ *Id.*

⁷² Daniel Wood, *As Pandemic Deaths Add Up, Racial Disparities Persist – And in Some Cases Worsen*, NPR, Sept. 23, 2020, <https://www.npr.org/sections/health-shots/2020/09/23/914427907/as-pandemic-deaths-add-up-racial-disparities-persist-and-in-some-cases-worsen>.

⁷³ Maria Godoy, *‘Racial Inequality May Be as Deadly as COVID-19,’ Analysis Finds*, NPR, Aug. 27, 2020, <https://www.npr.org/sections/health-shots/2020/08/27/906002043/racial-inequality-may-be-as-deadly-as-covid-19-analysis-finds>.

104. Additionally, concerns about sexual harassment and violence and gender inequities have reached a pinnacle the past few years due to the Me Too Movement⁷⁴ and Times Up,⁷⁵ which have unearthed and publicized rampant discrimination against women in the workplace, especially against women of color and transwomen of color.

105. The United States Supreme Court’s recognition of marriage equality in *Obergefell v. Hodges*, 576 U.S. 644 (2015) was a culmination of decades of activism by the LGBTQ movement,⁷⁶ which continues to seek equality in other aspects of LGBTQ life, including employment.⁷⁷

106. Concepts like implicit bias, systemic discrimination, structural inequalities, and race and gender privileges and hierarchies have been increasingly acknowledged, embraced, and espoused in the speech of individuals, organizations, corporations, and associations of all races and backgrounds during recent months leading up to the issuance of EO 13950.

⁷⁴ Founded in 2006 by sexual violence survivor and activist Tarana Burke, the Me Too Movement went viral on social media in 2017 with the #MeToo hashtag in connection with highly publicized revelations of sexual violence; Me Too continues to assist and support survivors of sexual violence and their allies by “connecting survivors to resources, offering community organizing resources, pursuing a ‘me too’ policy platform, and working with researchers” <https://metoomvmt.org/>. Me Too Movement, *Get to Know Us* (last visited Oct. 28, 2020), <https://metoomvmt.org/get-to-know-us/>; Me Too Movement, *Vision & Theory of Change* (last visited Oct. 28, 2020), <https://metoomvmt.org/get-to-know-us/vision-theory-of-change/>.

⁷⁵ Originally founded in 2017 by over 300 women in the entertainment industry, Times Up is a not-for-profit organization and charitable foundation committed to gender equality. Time’s Up *Time’s Up Was Born When Women Said “Enough Is Enough”* (last visited Oct. 28, 2020), <https://timesupfoundation.org/about/our-story/>.

⁷⁶ Nathaniel Frank, *The Long Road to Marriage Equality*, SLATE, June 26, 2015, <https://slate.com/human-interest/2015/06/gay-marriage-a-history-of-the-movement-for-marriage-equality.html>.

⁷⁷ Emma Green, *America Moved on From Its Gay-Rights Moment and Left a Legal Mess Behind*, THE ATLANTIC, Aug. 17, 2019, <https://www.theatlantic.com/politics/archive/2019/08/lgbtq-rights-america-arent-resolved/596287/>.

107. It is, therefore, clear from the text of EO 13950, the statements and conduct of the Trump Administration before and after the issuance of the Order, and the words of President Trump himself that EO 13950 was conceived, drafted, and implemented to impose upon both public and private entities the views, opinions, and perspectives of the Trump Administration, in conflict with the Plaintiffs’ own speech, as well as the Class—to the detriment of Plaintiffs’ interests, as well as the interests of their employees, in diversity, inclusion, and equality for people of color, women, and LGBTQ individuals.

C. EO 13950 Censors and Chills Important Speech that Advances Equality for People of Color, Women, and LGBTQ Persons in Deference to the Trump Administration’s Viewpoints, as Expressed by President Trump Himself.

108. Federal contractors and grant recipients like Plaintiffs reasonably want to discuss and address implicit biases and structural inequalities to ensure equal opportunity in their workplaces and prevent hostile work environments. For example, a study of gender biases among committee members evaluating candidates for competitive research positions found that “educating evaluative committees about gender biases” had an effect on whether committee members with strong implicit gender biases were able to make selection decisions unaffected by those biases.⁷⁸

109. Counteracting the effects of implicit biases or structural inequalities produces positive results for employers by maximizing the potential and productivity of their workforce, facilitating efficiency and economy in the workplace, and preventing discord and possible litigation regarding employment discrimination or a hostile work environment. For example, a study of LGBTQ employees working in unwelcoming environments found that 25% felt

⁷⁸ Isabelle Régner et al., *Committees with Implicit Biases Promote Fewer Women When They Do Not Believe Gender Bias Exists*, 3 NATURE HUM. BEHAV. 1171 (2019).

“distracted from work,” “17% felt exhausted from spending time and energy hiding their sexual orientation,” and “20% searched for a different job.”⁷⁹

110. Moreover, employers benefit directly from the diversity of their workforce. “[C]ompanies in the top quartile for gender or racial and ethnic diversity are more likely to have financial returns above their national industry medians. Companies in the bottom quartile in these dimensions are statistically less likely to achieve above-average returns.”⁸⁰ Diversity can also “drive innovation” by “creating an environment where ‘outside the box’ ideas are heard.”⁸¹ And “[i]n the fight for global talent, diversity and inclusion policies . . . help[] to broaden the pool of talent a company can recruit from, while also helping to build an employment brand that is seen as fully inclusive.”⁸²

111. Fortune 500 companies and leaders in the United States military have repeatedly expressed the importance of diversity to the success of their work and speak openly about the value of diversity initiatives to building strong teams and increasing productivity. *See, e.g.*, Brief of Lt. Gen. Julius W. Becton Jr. et al., as Amici Curiae Supporting Respondents, *Grutter v. Bollinger*, 539 U.S. 98 (2003) (Nos. 02-241, 02-516), 2003 WL 1787554; Brief for General Motors as Amici Curiae Supporting Respondents, *Grutter v. Bollinger*, 539 U.S. 98 (2003) (Nos. 02-241, 02-516), 2003 WL 399096; Brief of Lt. Gen. Julius W. Becton Jr. et al., as Amici Curiae

⁷⁹ Human Rights Campaign Foundation, *LGBTQ Working People of Color Need Paid Leave* 8 (May 2018), <https://hrc-prod-requests.s3-us-west-2.amazonaws.com/files/assets/resources/HRC-PaidLeave-POCReport-FINAL.pdf?mtime=20200713133946&focal=none>.

⁸⁰ Vivian Hunt et al., *Why Diversity Matters*, McKinsey & Company, Jan. 1, 2015, <https://www.mckinsey.com/business-functions/organization/our-insights/why-diversity-matters>.

⁸¹ Sylvia Ann Hewlett et al., *How Diversity Can Drive Innovation*, HARV. BUS. REV. (2013), <https://hbr.org/2013/12/how-diversity-can-drive-innovation>.

⁸² *Fostering Innovation Through a Diverse Workforce*, FORBES 7 (2011), https://images.forbes.com/forbesinsights/StudyPDFs/Innovation_Through_Diversity.pdf.

Supporting Respondents, *Fisher v. Univ. of Texas at Austin* (No. 14-981), 2015 WL 6774556; Brief for Fortune-100 et al. as Amici Curiae Supporting Respondents, *Fisher v. Univ. of Texas at Austin*, (No. 14-981), 2015 WL 6735839.

112. Nevertheless, EO 13950 threatens to slow, restrict and, in some cases, prohibit the various forms of speech and actions that corporations and other entities have undertaken in response to increased awareness of racial and gender inequity in general and in response to the related demands of their employees, customers, investors, boards of directors and leadership.

113. EO 13950 censors and chills Protected Speech of all federal contractors and subcontractors, hindering their ability to successfully train their employees and implement critical programs to combat discrimination in the workplace and promote diversity and inclusion. Plaintiffs' Protected Speech, including any diversity trainings, provides an essential forum for citizens to discuss public issues that affect society broadly speaking and also have a meaningful application in the workplace, maximizing the productivity of employees and ensuring that employees of all backgrounds are respected and included.

114. Thus, when federal contractors and grant recipients are discussing issues of equality and inclusion, they are expressing protected viewpoints concerning topics of the utmost importance to our democracy and essential to the successful functioning of a diverse workplace. Such discourse is critical speech protected by the First Amendment. *Snyder v. Phelps*, 562 U.S. 443, 453 (2011).

115. The Supreme Court has recognized that such speech is at the *core* of the First Amendment's protections. "Speech by citizens on matters of public concern lies at the heart of the First Amendment, which 'was fashioned to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people.'" *Lane v. Franks*, 573

U.S. 228, 235-36 (2014) (quoting *Roth v. U.S.*, 354 U.S. 476, 484 (1957)). Speech on public issues, particularly relating to any matter of political, social, or other concern to the community, “occupies the highest rung of the hierarchy of First Amendment values, and is entitled to special protection.” *Snyder*, 562 U.S. at 453. For that reason, courts have historically struck down government actions censoring speech by federal employees that relates to issues of racial justice, gender equality, and social progress. *See, e.g., Hardy v. Jefferson Cmty. College*, 260 F.3d 671, 679 (6th Cir. 2001) (finding that “race, gender, and power conflicts in our society” are “matters of overwhelming public concern”).

116. EO 13950 places a significant burden on Plaintiffs’ Protected Speech because it explicitly calls for government retaliation against federal contractors and subcontractors who express Protected Speech, including diversity trainings, that are in not line with President Trump’s views, even when those trainings are with the contractors’ own employees.

117. The Protected Speech, including workplace trainings, of an entire organization can be censored by EO 13950 by virtue of a single federal contract even when the Protected Speech has no connection to a federal contract.

118. As a result, private entities must refrain from constitutionally protected speech in order to compete for and receive federal contracts and grants.

119. The Order also threatens to chill speech that may not even violate the restrictions in the Order because many federal contractors will choose to err on the side of caution and decline to discuss any matters that even remotely bear on issues of race or sex, for fear of violating the broad prohibitions in the Order. In addition, the Order invokes the enforcement power of the Department of Justice and the prospect of liability under Title VII of the Civil Rights Act of 1964

for those who would express views on race and gender that differ from the Administration's preferred approach as set out in the Order. EO 13950 Secs. 4(a)(4) & 8.

120. EO 13950 is already having an immediate and discernible chilling effect on protected speech as companies, organizations, and academic institutions halt diversity trainings for fear of the retaliation they might face pursuant to the terms of Section 4(a)(3) of the Order, which punishes non-compliance by “cancel[ing], terminat[ing], or suspend[ing]” contracts and allowing the offending contractors to “be declared ineligible for further Government contracts.” EO 13950 Sec. 4(a)(3).

121. On information and belief, workshops, trainings, and initiatives to address systemic racial discrimination have been put on hold or canceled; some entities have requested the exclusion of terms like “diversity,” “racism,” “systemic racism,” “critical race theory,” “white privilege,” “intersectionality,” and “unconscious bias” for fear of violating the Order.

122. For example, John A. Logan College, in Carterville, IL, rescinded an invitation to a professor who planned to give a talk in celebration of Hispanic Heritage Month.⁸³ The talk would have included discussions of Hispanic identity as well as Mr. Barrios's own story as an immigrant from Guatemala.⁸⁴

123. Similarly, within days of the Order's issuance, University of Iowa administrators suspended all diversity and inclusion trainings pending review even though the Order is not explicitly directed at public universities and despite the University administrators'

⁸³ Hailey Fuchs, *Trump Attack on Diversity Training Has a Quick and Chilling Effect*, N.Y. TIMES, Oct. 13, 2020, <https://www.nytimes.com/2020/10/13/us/politics/trump-diversity-training-race.html>.

⁸⁴ *Id.*

acknowledgment that the Order would have a chilling effect on campus.⁸⁵ The administrators' actions were motivated by a fear of losing federal funding due to potential noncompliance with the Order.

124. This chilling effect works to the detriment of all employees, but particularly members of protected groups who will lose out on the beneficial effects of such opportunities and programs that otherwise would have been available.

125. Likewise, Plaintiffs experience the chilling effect by having to consider what terms can or cannot be used in their Protected Speech in order to comply with EO 13950 and allow them to remain eligible for federal contracts and/or federal grants.

126. The Administration can offer no credible justification for its broad assault on free speech. To the contrary, the language in the Order, as well as the context in which it was issued, make clear that the primary motive for the Order is to silence particular viewpoints on race and gender with which President Trump disagrees.

127. With the enforcement of the Order, Plaintiffs and more than 100,000 other federal contractors and grantees will be denied the right to free speech, one of the most fundamental rights in our democratic system.

III. EO 13950 DIRECTLY HARMS PLAINTIFFS NATIONAL URBAN LEAGUE, NATIONAL FAIR HOUSING ALLIANCE, AND CLASS MEMBERS

128. NUL entered into an Apprenticeship Contract with the Department of Labor in July of 2016, for a 12-month term with four (4) one-year renewal options. Specifically, NUL contracted

⁸⁵ Cleo Krejci, *Executive order silences speech, UI leaders say, following decision to suspend diversity training under White House treat to cut funding*, Iowa City Press-Citizen, Oct. 9, 2020, <https://www.press-citizen.com/story/news/education/university-of-iowa/2020/10/09/university-iowa-suspend-diversity-training-trump-executive-order-raises-questions/5903117002/>

to act as a National Equity Partner to work with the DOL's Office of Apprenticeship to develop partnerships with strategic sponsors committed to increasing the numbers of underrepresented persons who enter and complete Registered Apprenticeship Programs. NUL's work under the Apprenticeship Program includes: developing and presenting trainings on diversity and inclusion; developing strategic tools and plans to increase access, entry and retention of underrepresented persons to apply to Registered Apprenticeships; scaling current diversity and inclusion practices; and developing tools and strategies for employer affirmative action plans among other work.

129. NUL's Apprenticeship Contract is a part of the DOL's Employment and Training Administration's ("ETA") investment in the growth of apprenticeship programs in various industries, including healthcare, construction, transportation and logistics, manufacturing, and information and communications technology; and support increasing demographic diversity and inclusion in apprenticeship among traditionally underrepresented populations.

130. NUL intends to apply for future contracts with the government. After working with the ETA for four years, NUL has become a valuable contractor with the government and has gained further expertise in the apprenticeship program. NUL's contract with the government was extended in 2017, 2018 and 2019. Despite a positive relationship for almost four years, this September, around the time that the EO 13950 was written and issued, DOL extended the contract only until December 31, 2020 instead of September 20, 2021, as was an option in the contract.

131. NUL has also received many grant awards from various federal government agencies and expects to continue to apply for and receive federal grants in the future. Several of NUL's government grants are currently effective. NUL received a grant from DOL and ETA for \$4,626,557 for the period of July 1, 2020 through November 1, 2020. This grant award was provided under DOL's Senior Community Service Employment Program, which is a program

under the DOL and ETA where grantees provide training for low-income, unemployed seniors to allow them to reenter the workforce. NUL's funding under this grant program was also recently increased to a total of \$11,571,239 for the period beginning on January 1, 2020. NUL also received a grant under DOL and ETA's H-1B One Workforce Grant Program which provides funds for grantees to develop workforce strategies for middle- to high-skilled H-1B occupations. NUL recently received a grant from the Department of Commerce of \$500,000 for the period of June 1, 2020 until May 31, 2021 to fund NUL's work with their Entrepreneurship Cares Act Assistance. Moreover, NUL has received further funds of \$4,500,000 from DOL and ETA under the Young Adult Reentry Partnership for the period of July 1, 2020 through December 31, 2023 wherein NUL uses the funds to provide education and training to young adults who have been involved in the criminal justice system in order to help them reenter the workforce.

132. NUL's past grants further evidence the organization's continued interest in applying for future grant funds. NUL previously received a grant for \$10,000,000 covering the period from October 27, 2015 through October 26, 2019 under the H-1B Ready to Work Partnership which provides funds for grantees to provide unemployed workers with counseling and training for employment in industries that use H-1B visas to hire foreign workers. NUL also received an award for \$1,800,000 covering the period of October 1, 2017 to September 30, 2020 from the Department of Justice's ("DOJ") Office of Juvenile Justice and Delinquency Prevention under the Juvenile Mentoring Program where grantees provide mentorship programs for youth. During the financial year of 2019, NUL received a grant of \$871,183 from the Department of Housing and Urban Development ("HUD") in order for NUL to engage in comprehensive counseling for HUD customers from October 1, 2018 until March 31, 2020.

133. In order to qualify for the Apprenticeship Contract, NUL was considered a subject matter expert regarding issues of diversity, equity and inclusion. In keeping with this status, NUL provides external and internal messaging to the public and its own employees regarding the issues of bias and structural racism that are inherent in American institutions and workplaces. Over the years, NUL has published a variety of external-facing documents that mirror the concepts that NUL communicates internally to its employees. From discussions on implicit racial biases to the systemic oppression that Black Americans face, NUL employees regularly engage in the discussion of concepts that the Order appears to target.⁸⁶

134. Fundamental to NUL's current and future work is its conceptual understanding of racism and sexism, especially as roadblocks to diversity and inclusion efforts. NUL employees operate from an understanding that successful diversity and inclusion efforts must acknowledge and account for systemic racism and sexism in America and that diversity and inclusion efforts require open dialogue around these issues and the space to recognize and name biases consciously and unconsciously held.

135. Moreover, NUL's diversity and inclusion work specifically aims to counteract the reliance in this country on concepts like "colorblindness" and "meritocracy" as a means to ignore or minimize the historical and ongoing impact of policies and institutions set up for the benefit of a white majority at the expense of people of color. These concepts—that inform and animate NUL's internal and government-contracted work—have been deemed unacceptable "divisive concepts" under EO 13950, which specifically prohibits all government contractors (such as NUL) from communicating these concepts to their own employees. The Order thus invades NUL's

⁸⁶ See, e.g., Marc Morial (President, NUL), *Starbucks Arrests Show "Hidden" Implicit Bias*, HUDSON VALLEY PRESS (April 25, 2018), <https://hudsonvalleypress.com/2018/04/25/starbucks-arrests-show-hidden-implicit-bias/>.

freedom of speech and unduly interferes with its prerogative to communicate mission-critical ideas and principles to its employees.

136. NUL has a mutual interest with its employees to ensure diversity and inclusion in its workplace so that all employees, regardless of their race, ethnicity, sex, gender, sexual orientation, or gender identity, feel welcome and valued. Having a more diverse and inclusive workplace increases employee satisfaction and productivity, produces greater innovation and ideas, and helps NUL better serve its mission overall. NUL is concerned that EO 13950 will have a detrimental impact on its employees of color, female employees, and LGBTQ employees, who may not be able to challenge the Order themselves.

137. Because NUL has been considered a subject matter expert in diversity concepts that the Order targets, NUL is less likely to be awarded future contracts or grants due to its visible alignment with (and promotion of) these disfavored concepts. Notwithstanding NUL's ability and readiness to do so, Enforcement of the Order would mean that NUL will no longer be able to compete for federal grants or contracts on a fair and equitable basis against other organizations whose mission and public statements are less intertwined with promoting racial equality. Indeed, within days of the Order being released on September 22, 2020, NUL was informed that its current DOL contract would not be extended for a fifth year, despite being previously granted extensions in each of the last four years.

138. Likewise, NFHA and its members have previously been awarded contracts and grants from the Federal Government. NFHA contracted with the Department of Housing and Urban Development ("HUD") in 2019 in the Technical Assistance and Capacity Building Program Cooperative Agreement (the "TACBP Contract"). The TACBP Contract is a part of a broader HUD program aimed at procuring and supporting organizations to focus on needs assessments,

capacity-building engagements, maintenance of tools and products used in teaching adults how to understand HUD requirements, data analysis and reporting, Indian Housing Block Grant Allocation Formula rulemaking, administrative activities, coordination of activities, and other learning initiatives and knowledge management initiatives. The TACBP Contract between HUD and NFHA has a three-year term and is currently set to expire on July 29, 2022. Under the TACBP Contract, HUD requests that NFHA performs certain services, such as trainings, to HUD and its customers under the direction and oversight of HUD through a work order. HUD reimburses NFHA for both administrative costs and approved time and expenses under specific work plans.

139. Over the duration of the TACBP Contract, NFHA conducted several internal trainings for its members regarding diversity and inclusion efforts. In order to fulfill its mission in an effective manner, NFHA commonly holds trainings and conversations for its members and staff that address issues of systemic racism, unconscious bias, and racial inequities. Recently, NFHA held informal discussions with its employees concerning systemic racism and perceptions of white people and other demographic groups in connection with the killing of George Floyd. As an organization focused on preventing housing discrimination and providing underserved populations with equal access to housing opportunities, NFHA will continue to hold similar trainings and discussions with its members and employees in the future. Indeed, fair housing advocates must use the lessons of history to address the current manifestations of that history; otherwise, they cannot help create a fair and equitable society. NFHA has also held conversations, discussions, education and outreach events, and trainings with non-profit groups and housing and lending stakeholders, including fair housing organizations, academicians, think tanks, non-profit organizations, financial services institutions, governmental entities, real estate sales groups, and housing industry trade associations on issues of systemic racism, structural inequities, sexism,

unconscious bias, and intersectionality. Many of these groups include NFHA's members. These conversations, discussions, education and outreach events, and trainings increased precipitously in the aftermath of the COVID-19 health pandemic and the murder of George Floyd. Various stakeholders wanted training and information from NFHA on why the nation was experiencing grave disparities related to the COVID-19 pandemic and economic crisis; a better understanding about why residential segregation is still significant in many communities; insights into why racial disparities exist with respect to arrest and conviction rates; information about the intersectionality between segregation and disparate health, housing, credit, and criminal justice outcomes; and help understanding what programs and policies should be implemented to address continuing racial inequities.

140. NFHA also produces an annual report, Fair Housing Trends, that discusses the major issues related to housing discrimination and equal housing opportunity in the nation. This report often covers issues like residential segregation and its intersection with structural inequality, environmental injustice, criminal injustice, climate change. The report often also deals with issues that impact fair housing like implicit or unconscious bias, systemic racism, and sexism. This report is used by a wide group of stakeholders, including its members and employees.

141. The Order purports to prohibit private entities from speaking about structural inequalities in America and implicit biases with their employees or member organizations by deeming such subjects “divisive concepts.” Based on its past and future speech, NFHA could face debarment or the loss of future opportunities to compete for federal grants and contracts should it continue to discuss issues of race and inclusion with its members and its employees consistent with its mission and purpose.

142. NFHA has a mutual interest with its employees to ensure diversity and inclusion in its workplace so that all employees, regardless of their race, ethnicity, sex, gender, sexual orientation, or gender identity, feel welcome and valued. In fact, having a more diverse and inclusive workplace increases employee satisfaction and productivity, produces greater innovation and ideas, and helps NFHA better serve its mission overall. NFHA is concerned that EO 13950 might have a detrimental impact on its employees of color, female employees, and LGBTQ employees, who may not be able to challenge the Order themselves.

CLASS ACTION ALLEGATIONS

143. Plaintiffs bring this suit on behalf of themselves and, under Federal Rule of Civil Procedure 23(a), 23(b)(1), 23(b)(2), 23(b)(3), and/or (c)(4), as representatives of the Class defined as follows (“the Class”):

All persons and entities who contract, bid to contract, or intend to bid to contract with, or who receive or intend to seek to receive federal grant funds from, the United States government or any federal agency, department, or division and who offer or intend to offer “workplace training” or programming concerning racial and/or gender discrimination and/or undertake work intended to examine and dismantle racism and gender discrimination.

Plaintiffs reserve the right to amend the Class definition, including with the use of subclasses, as additional facts become known through discovery.

144. The members of the Class are so numerous that joinder is impracticable. Upon information and belief, there are more than 100,000 federal contractors and more than 10,000 federal grantees each year. All such contractors and grantees are subject to the unlawful Order.

145. The claims and defenses of Plaintiffs are typical of the claims or defenses of members of the Class. Plaintiffs’ claims arose out of the same events and course of conduct that gives rise to the claims of other members of the Class. Plaintiffs and all members of the Class are subject to similar harm from the Order now and in the future.

146. The members of the Class share common issues of fact and law, including but not limited to:

- a. whether the Order's prohibition of Protected Speech, including trainings, qualifies as unconstitutional viewpoint discrimination in violation of the First Amendment;
- b. whether the Order's prohibition of Protected Speech, including trainings, is unconstitutionally vague in violation of the Fifth Amendment;
- c. whether the Order's prohibition of Protected Speech, including trainings, violates the Equal Protection component of the Fifth Amendment's Due Process Clause;
- d. whether and to what extent Defendants' actions may impair or threaten future activities protected by the First Amendment; and
- e. what equitable and injunctive relief is warranted.

147. Plaintiffs will fairly and adequately protect the interests of the proposed Class. Neither Plaintiff has any interest that is now or may later be antagonistic to the interests of the proposed Class. The attorneys representing the Plaintiffs include experienced attorneys who are considered able practitioners in federal civil litigation, including complex litigation and class actions, and they should be appointed class counsel.

148. Maintaining individual actions would create a risk of "inconsistent or varying adjudications with respect to individual members that would establish incompatible standards of conduct for the party opposing the class." Fed. R. Civ. P. 23(b)(1)(A). Multiple courts issuing multiple injunctions governing the permissible reach and effect of the Order on the Class would

be untenable. Doing so would only contribute to the existing state of uncertainty and confusion that surrounds the meaning and effect of the Order.

149. This case involves “adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications.” Fed. R. Civ. P. 23(b)(1)(A). A ruling with respect to a single Plaintiff in this case would arguably be strong *stare decisis*—if not necessarily *res judicata*—with respect to the other putative Class members and the federal government’s contracting and granting bodies. There is no benefit to allowing the overwhelmingly common issues in this case to be litigated individually. The interests of both Class members and Defendants requires class-wide treatment.

150. Defendants have acted or will act on grounds generally applicable to the Class by subjecting them to and purporting to enforce the Order. Injunctive and declaratory relief is therefore appropriate with respect to the Class as a whole.

151. Questions of law and fact common to members of each Class will predominate over any questions that may affect only individual members because Defendants have acted on grounds generally applicable to members of the Class.

152. Class treatment is a superior method for the fair and efficient adjudication of the controversy because, among other things, class treatment will permit a large number of similarly situated entities to prosecute their common claims in the same forum simultaneously, efficiently, and without the unnecessary duplication of evidence, effort, and expense that numerous individual actions would engender. The benefits of proceeding through the class mechanism, including providing injured persons and entities with a means of obtaining redress on claims that might not be practicable to pursue individually, substantially outweigh any difficulties that may arise in the management of this class action.

153. A class action is also manageable, and Plaintiffs know of no management difficulties that would preclude class certification in this case.

154. Plaintiffs reserve the right to seek to certify common questions related to Defendants' knowledge, intent, and actions.

PLAINTIFFS REQUIRE IMMEDIATE RELIEF

155. Plaintiffs have standing to challenge the EO 13950 and their claims are ripe for immediate adjudication today.

156. Plaintiffs have suffered injury-in-fact. As set forth above, Plaintiffs provide Protected Speech, including workplace training and other communications, containing subjects almost certainly prohibited by the Order. For example, Plaintiffs' workplace training relies on in-depth discussion of systemic racism, gender and sex discrimination, and implicit biases, which, under the vague definitions of the Order, is considered prohibited "inculcat[ion]" of several "divisive concepts." Given the existing content of Plaintiffs' Protected Speech, including any workplace training, and their intention to continue expressing the Protected Speech, Plaintiffs are preemptively disqualified from federal contract and grant opportunities. These "lost contracting [and grant] opportunities" are sufficient to establish injury in fact. *Info. Handling Servs., Inc. v. Def. Automated Printing Servs.*, 338 F.3d 1024, 1029 (D.C. Cir. 2003).

157. Plaintiffs would compete for future federal contracts and/or federal grants absent the unconstitutional censorship of Plaintiffs' Protected Speech. As set forth above, Plaintiffs competed for and received federal contracts and grants in the past; Plaintiffs provide expertise and services that are beneficial to the government and to disadvantaged communities; and Plaintiffs have actively explored whether they could compete for future federal contracts and/or federal grants consistent with their organizational mission and values. Notwithstanding Plaintiffs' ability

and readiness to compete for future contracts and/or federal grants, the Order prevents Plaintiffs from doing so.

158. In addition, the Order burdens Plaintiffs’ expressive rights. As set forth above, the Protected Speech, including any workplace diversity training, is critical to Plaintiffs’ respective organizational missions. But the only way they can continue to compete for and receive federal contracts and/or grants is to refrain from expressing their Protected Speech. NFHA, in particular, will be required to cease, or substantially modify, its diversity training as of November 21, 2020, when grantees must certify that they will not use federal funds for promoting certain “divisive concepts”—topics that NFHA routinely discusses.

159. In light of the substantial and imminent constitutional injury, Plaintiffs are left with no choice but to seek immediate judicial relief, including declaratory relief and a preliminary and permanent injunction.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

ULTRA VIRES ACTION IN VIOLATION OF THE FIRST AMENDMENT – VIEWPOINT DISCRIMINATION

1. Plaintiffs incorporate and re-allege each and every allegation contained above as if fully set forth herein.

2. Plaintiffs have a cause of action in equity and under the All Writs Act, 28 U.S.C. § 1651, to declare unlawful and to enjoin a Presidential Executive Order or other Presidential action that is ultra vires. *See Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 327 (2015) (“The ability to sue to enjoin unconstitutional actions by state and federal officers is the creation of courts of equity, and reflects a long history of judicial review of illegal executive action, tracing back to England.”).

3. The First Amendment to the United States Constitution prohibits any law that “abridg[es] the freedom of speech.” U.S. CONST. amend. I.

4. In violation of the First Amendment’s protection of speech, President Trump issued EO 13950 to silence viewpoints disliked by his Administration. *Matal v. Tam*, 137 S. Ct. 1744, 1751 (2017).

5. The Order identifies viewpoints that the Trump Administration dislikes—such as the existence of white privilege, implicit bias, systemic racism, structural inequalities, or intersectional experiences of discrimination—and attempts to purge them from the national conversation by denying benefits, such as government contracts and grants, to private entities like Plaintiffs who expresses speech on these censored topics.

6. This targeted censorship violates the First Amendment rights of Plaintiffs and the Class by chilling their ability to speak on important issues of diversity and equality without risking the loss of government benefits. *See Agency v. Int’l Dev. v. Alliance for Open Soc’y Int’l Inc.*, 570 U.S. 205 (2013) (holding unconstitutional a statutory provision conditioning funding on organizations expressly opposing prostitution).

7. Plaintiffs’ Protected Speech is protected by the First Amendment in the workplace because they are speaking 1) in their capacity as a private citizen and 2) on matters of public concern. *Garcetti v. Ceballos*, 547 U.S. 410, 420, 426 (2006); *Umbehr*, 518 U.S. at 669 (treating employees and contractors the same).

8. The Trump Administration is not permitted to ban Plaintiffs’ Protected Speech because their interests “in a broad range of present and future expression” are not “outweighed by that expression’s ‘necessary impact on the actual operation’ of the Government,” *United States v. Nat’l Treasury Employees Union*, 513 U.S. 454, 468 (1995), and EO 13950 is not “tailored to

address the harm that the government allegedly aims to protect,” *Sanjour v. E.P.A.*, 56 F.3d 85, 97 (D.C. Cir. 1995).

9. A Presidential Executive Order issued in violation of the U.S. Constitution is *ultra vires* and therefore void.

10. EO 13950 unlawfully restricts speech on matters of public concern and public welfare, which is entitled to the highest protection in our constitutional system. The Order was intended to have, is having, and will likely continue to have, the effect of chilling constitutionally protected speech on issues of racial and gender equality as well as efforts to reckon with historical systems of oppression in order to shape a more just and fair society.

11. As alleged above, EO 13950, on its face and as applied to Plaintiffs, unconstitutionally infringes or imminently threatens to infringe Plaintiffs’ rights under the First Amendment to the United States Constitution.

12. Plaintiffs have been and will be irreparably harmed by President Trump’s *ultra vires* EO 13950 issued in violation of the First Amendment and have no adequate remedy at law.

SECOND CLAIM FOR RELIEF

VIOLATION OF THE FIFTH AMENDMENT – VOID FOR VAGUENESS

13. Plaintiffs incorporate and re-allege each and every allegation contained above as if fully set forth herein.

14. Under the Fifth Amendment to the United States Constitution, a federal law is unconstitutionally vague if it “fails to provide a person of ordinary intelligence fair notice of what is prohibited, or is so standardless that it authorizes or encourages seriously discriminatory enforcement.” *United States v. Williams*, 553 U.S. 285, 304 (2008);); *see also* U.S. CONST. amend. V. EO 13950 fails on both fronts.

15. EO 13950 fails to provide fair notice of what conduct it requires from the Plaintiffs. The Order prohibits “workplace training” that “inculcates” in employees certain “divisive concepts,” but it does not adequately define “workplace training,” “inculcates,” or many of the “divisive concepts,” among other terms. EO 13950 provides no way to reasonably discern the line between “discussing” a divisive concept on the one hand, and impermissibly “inclucat[ing]” that concept on the other. The failure to define this subjective term, among others, renders EO 13950 essentially meaningless.

16. EO 13950 also fails to provide any explicit, objective standards for enforcement. Section 4, for example, directs the Department of Labor to “investigate complaints” and “take appropriate enforcement action and provide remedial relief, as appropriate” in response to violations. EO 13950 Sec. 4. There are no standards to guide what is and what is not a violation. As a result, the Department of Labor has unfettered discretion to enforce EO 13950 as it sees fit, including by terminating the federal contracts and/or grants of organizations committed to diversity and inclusion, or preventing them from competing for contracts and/or grants in the first place. EO 13950 thus encourages and sanctions arbitrary, subjective, and discriminatory enforcement.

17. The absence of explicit, objective standards in EO 13950, coupled with the Department of Labor’s unfettered discretion to enforce the Order, have, is having, and will likely continue to have the effect of chilling constitutionally protected speech on issues of racial and gender equality as well as efforts to reckon with historical systems of oppression in order to shape a more just and fair society.

18. For all these reasons, and as set forth elsewhere in this Complaint, EO 13950 is unconstitutionally vague in violation of the Fifth Amendment’s Due Process Clause.

THIRD CLAIM FOR RELIEF

FIFTH AMENDMENT – VIOLATION OF EQUAL PROTECTION CLAUSE

19. Plaintiffs incorporate and re-allege each and every allegation contained above as if fully set forth herein.

20. The Equal Protection component of the Fifth Amendment's Due Process Clause guarantees persons the equal protection of the laws and prohibits the government from treating persons differently—on the basis of their race, religion, national origin, or alienage—than similarly situated individuals. *Sessions v. Morales*, 137 S. Ct. 1678, 1686 n.1 (2017); *United States v. Windsor*, 133 S. Ct. 2675, 2693 (2013); *Bolling v. Sharpe*, 347 U.S. 497 (1954).

21. Race and sex-based discrimination against individuals who are people of color, women, and/or LGBTQ were a substantial or motivating factor behind the issuance of EO 13950, in violation of the Fifth Amendment.

22. The inference of a race and sex-based discriminatory motive is supported by several factors.

23. President Trump's multiple false statements maligning speech and viewpoints that acknowledge the history and persistence of discrimination evince a discriminatory motive.

24. EO 13950's prohibitions on topics, including systemic race and sex discrimination, implicit race and sex biases, and the persistent harms associated with systemic discrimination and implicit biases, penalizes employers seeking to eradicate discrimination in the workplace and to ensure a hostility-free work environment for people of color, women, and/or LGBTQ individuals.

25. The Trump Administration has engaged in procedural and substantive departures in the course of its issuance, resulting in substantive irregularities, which are indicative of its discriminatory intent.

26. Although maximizing efficiency and economy in the workplace are noted as motivating reasons for the issuance of EO 13950, the Order actually undermines these goals because employers counteracting the effects of implicit biases, structural inequalities, systemic discrimination, and racial/gender privileges and hierarchies maximize the potential, productivity, and economy of their workforce.

27. The historical background of the Order evinces its “invidious purpose” of silencing viewpoints inconsistent with those of the Trump Administration and advancing a revisionist history that denies the enduring effects of the historic subjugation of people of color, women, and/or LGBTQ individuals to the detriment of those persons.

28. Moreover, the specific sequence of events leading up to the issuance of the Order illustrate its intention to continue the Trump Administration’s efforts to deny the historic and persistent discrimination experienced by people of color, women, and/or LGBTQ community in our society.

29. Finally, the Trump Administration’s cancellation of trainings in response to EO 13950 has established a clear pattern of targeting trainings and other speech that addresses and discusses concepts pertaining to systemic discrimination and structural inequalities.

30. Taken together, the false statements made about the Order’s prohibited speech; the inconsistency between the Order’s stated goals for workforce economy and efficiency and opposite actual effect; the foreseeable certainty of its disparate impact on people of color, women, and/or LGBTQ individuals; the Order’s procedural and substantive departures; the Order’s historical background and the sequence of events preceding its issuance; and the Trump Administration’s clear pattern of cancelling trainings that address and discuss issues pertaining to systemic discrimination and structural inequalities against people of color, women, and/or LGBTQ

individuals, all indicate an intent to discriminate on the basis of race, national origin, sex, and/or gender.

31. The Trump Administration's stated justifications and policy rationales for EO 13950 are pre-textual and meant to obfuscate its impermissible discriminatory purpose.

REQUEST FOR RELIEF

Plaintiffs respectfully request that the Court grant the following relief:

- A. A declaration pursuant to 28 U.S.C. § 2201 that EO 13950 is unlawful and invalid.
- B. A permanent injunction enjoining Defendant, his officials, agents, employees, assigns, and all persons acting in concert or participating with them from implementing or enforcing any part of EO 13950;
- C. An order awarding Plaintiff cost of suit, and reasonable attorneys' fees and expenses pursuant to any applicable law; and
- D. Such other relief as this Court deems equitable, just, and proper.

Dated: October 29, 2020

Respectfully submitted,

/s/ Samuel Spital

Sherrilyn Ifill*

Director-Counsel

Janai Nelson*

Samuel Spital, Bar ID NY0248

Counsel of Record

Jin Hee Lee**

Monique Lin-Luse**

Amber Koonce**

**NAACP LEGAL DEFENSE AND
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Ajmel Quereshi, Bar ID 1012205
**NAACP LEGAL DEFENSE AND
EDUCATIONAL FUND, INC.**
700 14th Street N.W., Ste.600
Washington, DC 20005
Tel: (202) 682-1300

**admission to the D.D.C. forthcoming*
***pro hac vice application forthcoming*

Message

From: Davidson, Patricia J - OFCCP [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=881AFF8BF6FB4A85AE33921A0CB1596B-DAVIDSON, P]
Sent: 10/29/2020 5:42:33 PM
To: Lupardo, Jeffrey - SOL [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e9be16c2b6ba4424bee7db27be14389e-Lupardo, Je]; Dankowitz, Beverly - SOL [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d35b44f0957b4cdeb796c97e5990ebcf-Dankowitz,]; Leen, Craig - OFCCP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ffd4a5b3cc74f49a5d2bf4c747416d4-Leen, Craig]; Legum, Radine - SOL [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d21aa80a5d2c4ea498ef4f14b7be64ff-Legum, Radi]; Bickerstaffe, Keir - SOL [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=76946342408840629d14d5b8c536a764-Bickerstaff]
CC: Gaglione, Robert J - OFCCP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1488b4650b734927906fed5870ab9642-Gaglione, R]; Gean, Lissette - OFCCP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bbb9a13178c24aadb6b7613f2f9041f3-Gean, Lisse]; Kaiser, Javaid - OFCCP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1e5f5c483d9741aa8d6ed6b0dadd6027-Kaiser, Jav]; Smith, Kelley - OFCCP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0cea2c4e5e114c0daafc5aabb237c96a-Smith, Kell]; Williams, Tina T - OFCCP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=de1ca1bb58004746a50104bd40a50623-Williams, T]; LaJeunesse, Robert - OFCCP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c9f3ffa568704a2db7b79e20a25c080e-LaJeunesse,]
Subject: RE: EO 13950 Lawsuit

All,

Dr. Kaiser's team is working on this now,

Best,
Patty

Patricia Davidson
Deputy Director
Office of Federal Contract
Compliance Programs

(O) 202
(C) 202 **b(6)**

From: Lupardo, Jeffrey - SOL <**b(6)**@dol.gov>
Sent: Thursday, October 29, 2020 5:41 PM
To: Dankowitz, Beverly - SOL <**b(6)**@dol.gov>; Leen, Craig - OFCCP <Leen.Craig@DOL.gov>; Legum, Radine - SOL <**b(6)**@dol.gov>; Bickerstaffe, Keir - SOL <**b(6)**@dol.gov>
Cc: Gaglione, Robert J - OFCCP <Gaglione.Robert.J@dol.gov>; Davidson, Patricia J - OFCCP <**b(6)**@dol.gov>; Gean, Lissette - OFCCP <**b(6)**@dol.gov>; Kaiser, Javaid - OFCCP <**b(6)**@dol.gov>; Smith, Kelley - OFCCP <**b(6)**@dol.gov>; Williams, Tina T - OFCCP <**b(6)**@dol.gov>; LaJeunesse, Robert - OFCCP <**b(6)**@dol.gov>
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Jeff

From: Dankowitz, Beverly - SOL <[b(6)]@dol.gov>
Sent: Thursday, October 29, 2020 5:08 PM
To: Leen, Craig - OFCCP <Leen.Craig@DOL.gov>; Legum, Radine - SOL <[b(6)]@dol.gov>; Bickerstaffe, Keir - SOL <[b(6)]@dol.gov>; Lupardo, Jeffrey - SOL <[b(6)]@dol.gov>
Cc: Gaglione, Robert J - OFCCP <Gaglione.Robert.J@dol.gov>; Davidson, Patricia J - OFCCP <[b(6)]@dol.gov>; Gean, Lissette - OFCCP <[b(6)]@dol.gov>; Kaiser, Javaid - OFCCP <Kaiser.Javaid@dol.gov>; Smith, Kelley - OFCCP <[b(6)]@dol.gov>; Williams, Tina T - OFCCP <[b(6)]@dol.gov>; LaJeunesse, Robert - OFCCP <[b(6)]@dol.gov>
Subject: RE: EO 13950 Lawsuit

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And she confirmed that DOJ Federal Programs will represent the Department, which is good.

From: Leen, Craig - OFCCP <Leen.Craig@DOL.gov>
Sent: Thursday, October 29, 2020 2:51 PM
To: Dankowitz, Beverly - SOL <[b(6)]@dol.gov>; Legum, Radine - SOL <[b(6)]@dol.gov>; Bickerstaffe, Keir - SOL <[b(6)]@dol.gov>; Lupardo, Jeffrey - SOL <[b(6)]@dol.gov>
Cc: Gaglione, Robert J - OFCCP <Gaglione.Robert.J@dol.gov>; Davidson, Patricia J - OFCCP <[b(6)]@dol.gov>; Gean, Lissette - OFCCP <[b(6)]@dol.gov>; Kaiser, Javaid - OFCCP <Kaiser.Javaid@dol.gov>; Smith, Kelley - OFCCP <[b(6)]@dol.gov>; Williams, Tina T - OFCCP <[b(6)]@dol.gov>; LaJeunesse, Robert - OFCCP <[b(6)]@dol.gov>
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Sent: 10/29/2020 6:36:43 PM
To: OScannlain, Kate S - SOL [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fc246996e74e4c8d8c6e5c73700c3406-OScannlain,]
Subject: Fwd: EO 13950 Lawsuit

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From: Lupardo, Jeffrey - SOL <b(6)@dol.gov>
Sent: Thursday, October 29, 2020 5:40 PM
To: Dankowitz, Beverly - SOL; Leen, Craig - OFCCP; Legum, Radine - SOL; Bickerstaffe, Keir - SOL
Cc: Gaglione, Robert J - OFCCP; Davidson, Patricia J - OFCCP; Gean, Lissette - OFCCP; Kaiser, Javaid - OFCCP; Smith, Kelley - OFCCP; Williams, Tina T - OFCCP; LaJeunesse, Robert - OFCCP
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To: Leen, Craig - OFCCP <Leen.Craig@DOL.gov>; Legum, Radine - SOL <b(6)@dol.gov>; Bickerstaffe, Keir - SOL <b(6)@dol.gov>; Lupardo, Jeffrey - SOL <b(6)@dol.gov>
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dol.gov>

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To: OScannlain, Kate S - SOL [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fc246996e74e4c8d8c6e5c73700c3406-OScannlain,]
Subject: Re: EO 13950 Lawsuit

My pleasure. Will do.

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From: OScannlain, Kate S - SOL <OScannlain.Kate.S@dol.gov>
Sent: Thursday, October 29, 2020 6:42:55 PM
To: Leen, Craig - OFCCP <Leen.Craig@DOL.gov>
Subject: RE: EO 13950 Lawsuit

Thanks.

Let me know if jurisdiction team reaches a different result!

Kate S. O'Scannlain | Solicitor of Labor
200 Constitution Avenue, NW, Rm S2002, Washington, DC 20210
D 202-**b(6)** | E oscannlain.kate.s@dol.gov

From: Leen, Craig - OFCCP <Leen.Craig@DOL.gov>
Sent: Thursday, October 29, 2020 6:37 PM
To: OScannlain, Kate S - SOL <OScannlain.Kate.S@dol.gov>
Subject: Fwd: EO 13950 Lawsuit

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Sent: 10/30/2020 10:45:27 AM
To: Benjamin, Shenita A - OFCCP CTR [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9cb2432a12734a9bbdb85537fd322dfd-Benjamin, S]
CC: Tretheway, Andrea - OFCCP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4bcd1bd011a4f19a909b742d2b454dc-Tretheway,]; Rosser, Shamika M - OFCCP CTR [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bf4e9a794565427d8fb7320b1ccdff67-Rosser, Sha]
Subject: RE: Friday Morning Press Releases/Daily News Clippings: October 30, 2020

Thank you!

L

From: Benjamin, Shenita A - OFCCP CTR <Benjamin.Shenita.A@dol.gov>
Sent: Friday, October 30, 2020 10:34 AM
To: Leen, Craig - OFCCP <Leen.Craig@DOL.gov>; Gaglione, Robert J - OFCCP <Gaglione.Robert.J@dol.gov>; Davidson, Patricia J - OFCCP <[REDACTED]@dol.gov>

b(6)

Subject: Friday Morning Press Releases/Daily News Clippings: October 30, 2020

Friday Morning Press Releases: October 30, 2020

Date of Press Release	Company Name	Hyperlink to Release
October 30, 2020	Office of Federal Contract Compliance	U.S. Department of Labor and Becton, Dickinson and Company Enter Agreement to Resolve Alleged Compensation Discrimination

Friday Morning News Clips: October 30, 2020

Article #	Paper	Title
1	Bloomberg Law	Trump's Diversity Training Ban Draws NAACP Legal Challenge (1)
2	Bloomberg Law	Trump Rule Leads Contractors to Cut Diversity, Bias Training
3	NPR	Agencies, Contractors Suspend Diversity Training To Avoid Violating Trump Order
4	National Law Review	The 2020 Election: Previewing the Potential for Shifts in Labor & Employment Law

Article 1 ([back to top](#)) — [hyperlink to above](#)

Article Title: [Trump's Diversity Training Ban Draws NAACP Legal Challenge \(1\)](#)

News Source: Bloomberg Law

Reporter's Name: Mike Leonard, Paige Smith

Date: October 29, 2020

[Daily Labor Report®](#)



President Donald Trump speaks during a news conference at the White House on July 23, 2020.
Photographer: Yuri Gripas/Abaca/Bloomberg

Trump's Diversity Training Ban Draws NAACP Legal Challenge (1)

By [Mike Leonard](#) and [Paige Smith](#)

Oct. 29, 2020, 2:19 PM; Updated: Oct. 29, 2020, 3:59 PM

- **COURT:** D.D.C.
- **TRACK DOCKET:** [No. 20-cv-3121](#) (Bloomberg Law Subscription)
- **JUDGE:** [Amit P. Mehta](#) (Bloomberg Law Subscription)

The NAACP and other civil rights groups hit the Trump administration Thursday with a constitutional challenge to the president's recent [executive order](#) banning federal contractors and grant recipients from holding workplace diversity trainings that discuss "divisive" topics like race and sex "stereotyping and scapegoating."

"The order identifies viewpoints that the Trump administration dislikes—such as the existence of white privilege, implicit bias, systemic racism, structural inequalities, or intersectional experiences of discrimination—and attempts to purge them from the national conversation," the lawsuit says. "This targeted censorship violates the First Amendment."

The proposed class action was filed on behalf of the National Urban League and the National Fair Housing Alliance, two civil rights groups, in the U.S. District Court for the District of Columbia. It targets Executive Order 13950, titled “Combating Race and Sex Stereotyping,” which President Trump signed in late September.

The U.S. Department of Labor has been tasked with enforcing the order, which outlaws any training that suggests a worker is “inherently racist, sexist, or oppressive, whether consciously or unconsciously.”

The DOL’s Office of Federal Contract Compliance Programs has established complaint hotlines where workers can report instances of “offensive” trainings, and is seeking public input and sample training materials from federal contractors.

Craig Leen, who heads the contractor watchdog agency, previously said not all implicit or unconscious bias training is banned by the order. But he did say it outlaws programs on “white privilege” or “white fragility.”

The complaint calls the order “an extraordinary and unprecedented” act involving a “broad-based prohibition of private speech on matters of immense public concern” that “strikes at the heart” of efforts “to eradicate race and sex stereotyping” against “people of color, women, and LGBTQ individuals.”

“The depth and scope of EO 13950’s constitutional flaws are alarming and, if left unremedied, will erode the core principles of our democracy and the foundations of our pluralistic society,” the suit says.

It’s also unenforceably vague, according to the complaint.

In addition to Trump himself, it targets the Labor Department and Labor Secretary Eugene Scalia.

The case landed on the docket of Judge Amit P. Mehta, an Obama appointee who was assigned last week to oversee the Justice Department’s landmark antitrust lawsuit against Google.

Cause of Action: First Amendment; due process and equal protection clauses of the Fifth Amendment.

Relief: An injunction declaring the executive order unlawful and blocking it; costs and fees.

Potential Class Size: “All persons and entities who contract” or “bid to contract” with the federal government—as well as all recipients of, or applicants for, federal grants—that “offer or intend to offer” workplace diversity training sessions meant to “examine and dismantle racism and gender discrimination.”

Response: The White House and Labor Department didn’t immediately respond to requests for comment Thursday.

Attorneys: The civil rights groups are represented by NAACP Legal Defense and Educational Fund Inc.

The case is Nat’l Urban League v. Trump, D.D.C., No. 20-cv-3121, complaint filed 10/29/20.

(Updated with additional reporting.)

To contact the reporters on this story: Mike Leonard in Washington at mleonard@bloomberglaw.com; Paige Smith in Washington at psmith@bloomberglaw.com

To contact the editors responsible for this story: Rob Tricchinelli at rtricchinelli@bloomberglaw.com; Jay-Anne B. Casuga at jcasuga@bloomberglaw.com

[Article 2 \(back to top\)](#)

Article Title: [Trump Rule Leads Contractors to Cut Diversity, Bias Training](#)

News Source: Bloomberg Law

Reporter's Name: Paige Smith and Jeff Green

Date: October 30, 2020

[Daily Labor Report®](#)



Chris Kleponis/Polaris/Bloomberg

Trump Rule Leads Contractors to Cut Diversity, Bias Training

By Paige Smith and Jeff Green

Oct. 30, 2020, 5:00 AM

President Donald Trump's recent attempt to curb corporate diversity training will linger even if he loses Tuesday's election to former Vice President Joe Biden. Already, federal contractors are unsure of what they can say about race.

More than 300 events, training programs, research projects and other diversity-related activities have been delayed or canceled because of concern about a Sept. 22 executive order aimed at banning federal contractors and agencies from using terms in diversity training that the administration considers divisive and illegal, according to the African American Policy Forum, a social justice think tank. A Labor Department official said last week that the agency's already received more than 100 complaints via a government hotline to report possible violations.

The executive order, which bars the use of concepts such as "White privilege" and "White fragility," runs counter to a rush by corporations to enhance diversity efforts after the police killing of George Floyd in May. Many executives have pledged to tackle structural or implicit racism, which the Trump order also flagged as potentially illegal. The prospect of scrutiny from the government calls such initiatives into question, and casts a shadow that could long outlast the Trump administration.

The U.S. Chamber of Commerce and a group of more than 150 companies have asked that the order be rescinded. The NAACP Legal Defense and Educational Fund also said Thursday that it is representing the

National Urban League and the Fair Housing Alliance in a lawsuit over the order. Other suits may follow, said Shirley Wilcher, who was head of the U.S. Department of Labor's Office of Federal Contract Compliance Programs during the Clinton administration. She's now the executive director of the American Association for Access, Equity, and Diversity.

Even if Biden wins, companies will still have to be careful with what kinds of training materials they use, said Laura Mitchell, a principal with the law firm Jackson Lewis. She works with employers dealing with the OFCCP, which is asking federal contractors to turn over training materials and is fielding complaints through the new hotline.

The White House frames the new rule as mirroring existing anti-discrimination statutes, including Executive Order 11246 from 1965.

"It is unacceptable for taxpayer dollars to fund workplace training that promotes racial stereotypes or encourages discrimination based on the color of an employee's skin," White House spokesman Judd Deere said in an email Thursday.

By trying to change the interpretation of established policy, the administration could shape corporate training for years to come, even if Trump's successor rescinds the September executive order.

The complaint hotline probably is here to stay, said Mickey Silberman, an attorney who represents federal contractors in OFCCP matters. Under any administration, an agency charged with fighting discrimination wouldn't want to be seen eliminating a hotline that lets workers submit complaints.

For now, he said, companies have either put diversity training on hold until after the election, revised their training materials to meet the mandate or decided to ignore the order.

Sterling Cruz-Herr, founder of TransClue, a training and consulting company focused on equality for transgender and non-binary people, said the company was among the groups already affected by the rule. TransClue had a training session scheduled Oct. 7 for employees of the U.S. Environmental Protection Agency, but it was postponed because of the order.

"It's not so clear what fits and doesn't fit," Cruz-Herr said. The training would have offered tips on how the resilience of LGBTQ people against discrimination can be a pattern for people navigating the stress of Covid-19 as well as racial protests, they said in an interview.

Schools also might have to adjust, dropping certain references to slavery and racism in history lessons, said Vincent Wong, research associate with the African American Policy Forum. The group used a member mailing list and social media to gather examples of programs and materials being reconsidered. "It's spread like wildfire," he said.

Wong sees the executive order as a sign of the conservative reaction against the culture's growing recognition of systemic racism. He expects the rule to resonate for years.

"It's not going to go away if Trump loses the election," Wong said. "All of the infrastructure — that's going to remain."

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Article Title: [Agencies, Contractors Suspend Diversity Training To Avoid Violating Trump Order](#)

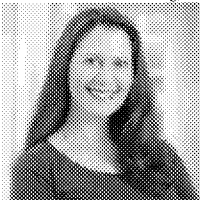
News Source: NPR

Reporter's Name: Melissa Block

Date: October 30, 2020

Agencies, Contractors Suspend Diversity Training To Avoid Violating Trump Order

October 30, 2020 5:00 AM ET
Heard on Morning Edition



[Melissa Block](#)



President Trump addresses a rally this week at Capital Region International Airport in Lansing, Mich. **Brendan Smialowski/AFP via Getty Images** **hide caption**

toggle caption

Brendan Smialowski/AFP via Getty Images

President Trump addresses a rally this week at Capital Region International Airport in Lansing, Mich.

Brendan Smialowski/AFP via Getty Images

Three civil rights groups filed a federal class-action lawsuit Thursday challenging the Trump administration's recent crackdown on diversity training.

The NAACP Legal Defense and Educational Fund, National Urban League and National Fair Housing Alliance call President Trump's Sept. 22 executive order "chillingly punitive" censorship that violates guarantees of free speech, equal protection and due process.

A few weeks ago, I BANNED efforts to indoctrinate government employees with divisive and harmful sex and race-based ideologies. Today, I've expanded that ban to people and companies that do business...

— Donald J. Trump (@realDonaldTrump) September 22, 2020

Trump's executive order prohibits certain diversity training that the administration says amounts to "divisive, anti-American propaganda."

In the five weeks since the order was signed, critics say it has had a widespread chilling effect as federal agencies, the military, government contractors and grant recipients scramble to figure out how to comply.

The order targets diversity training grounded in what the administration terms a "malign ideology" that "threatens to infect core institutions of our country."

Such an ideology, the order says, "is rooted in the pernicious and false belief that America is an irredeemably racist and sexist country."

The order applies broadly to federal agencies and the military as well as government contractors and recipients of federal grants, including universities and nonprofits.

Article continues after sponsor message

All three of these trainings from @StateDept, @EPA, and @DeptVetAffairs have been cancelled. Thanks for the help. <https://t.co/SqkSgnGETO>

— Russ Vought (@RussVought45) September 22, 2020

The departments of State, Justice and Veterans Affairs are among those that have suspended all diversity and inclusion training programs while they review their content. Many companies and universities have done the same.

The executive order also directs the Department of Labor to establish a government hotline encouraging "employees and other concerned members of the public" to ask questions or complain about diversity training

they find offensive or potentially unlawful, for possible investigation. The hotline has received more than 140 responses in the five weeks since it was set up.

The plaintiffs who filed the lawsuit this week say that hotline carries with it "alarming ... echoes of McCarthyism."

A White House memorandum warns that contractors found in violation could have their contracts suspended or canceled. Noncompliance by federal employees, the memo says, "will result in consequences, which may include adverse action."

Asked to explain the reasoning behind the order at the Sept. 29 presidential debate, Trump said, "They were teaching people that our country is a horrible place. It's a racist place. And they were teaching people to hate our country. And I'm not going to allow that to happen."

Factbase Videos YouTube

"A really scary place to be"

When Michelle Kim first heard about Trump's executive order, which is titled "Combating Race and Sex Stereotyping," she says, "My first immediate thought was, here we go."

Kim is co-founder and CEO of the company Awaken, based in Oakland, Calif., which provides workshops on diversity, equity and inclusion to businesses.

Her apprehension proved justified. It wasn't long after the order was issued that she heard from a concerned corporate client, asking Kim to review her materials to ensure they did not include any of the prohibited concepts.

Terms the Trump administration has singled out as potentially problematic include "white privilege," "systemic racism," "unconscious bias," "intersectionality," "racial humility" and "critical race theory."

Kim told her client that while she could theoretically avoid use of the term "white privilege" in her talk, if she did so, "I would be agreeing with the spirit of the ask, which is problematic on its own."



Race

Trump Tells Agencies To End Trainings On 'White Privilege' And 'Critical Race Theory'

She offered to nullify her speaking agreement, but in the end, she was able to assuage her client's concerns. Her talk on power and privilege in the workplace went forward.

Still, Kim says, damage has been done: "Instead of us being focused on actually fighting racism and being anti-racist, now we are scrambling to figure out the legal ramifications of it. I think in many ways the executive order has succeeded in creating that distraction."

The Trump administration's order, Kim believes, is founded on a gross misunderstanding of diversity training: the mistaken belief that it's all about blaming and vilifying white people. (The word "scapegoating" appears seven times in the executive order.)

That misconception is not just wrong, Kim says, but it's also dangerous. "Somehow we've gotten to a place where we believe fighting against racism is anti-patriotic," she says. "That's where we are as a society. And that's a really scary place to be."

"It's a dog whistle"

Joelle Emerson, co-founder and CEO of the diversity, equity and inclusion strategy firm Paradigm, admits to being "extremely naive" when she first read the executive order.

"I didn't believe that any of our clients would be fazed by this," Emerson says. "I was like, 'This is clearly propaganda. It's fascist propaganda. It's a dog whistle to Trump's base, and organizations that care about diversity, equity and inclusion are going to be just as offended by this order as we are.' And I was wrong."

As a result of the order, Emerson lost a client, a government contractor that decided to put all of its diversity training on hold.

The president's crackdown on diversity training is part of a broader culture war, Emerson says, a battle that plays on people's fears about what diversity represents. That fear, she says, is that "diversity is not for you. Diversity training is all about making you feel guilty about who you are, depriving you of your rights."

"Of course," she says, "none of that is accurate, but that's a fear that many white people have about diversity efforts. And this seems to be speaking directly to that fear, and trying very hard to tap into that fear, and sow division and discord."



Politics

Trump Expands Ban On Racial Sensitivity Training To Federal Contractors

At the employment law firm Littler Mendelson, Chris Gokturk has been fielding a flood of calls from companies that have government contracts.

"It's been a rough few weeks!" Gokturk says. "There's not enough hours in the day."

Gokturk helps businesses with their affirmative action and diversity programs, and since the order came out, her clients have had a lot of questions.

"The most common thing is, should we stop all of our diversity training? Should we just stop?" she says. "And, at first I said, 'No. You've vetted your training, you always review it and everything else.' "

Gokturk pauses.

"And then the hotline went up."

That email and telephone government hotline encourages people to submit information confidentially on training programs that involve "prohibited race or sex stereotyping or scapegoating."

"This is asking Americans to be surveilling other Americans, and this is — y'know, it's chilling. It's absolutely chilling," Stanford University sociology professor Shelley Correll says.

She studies gender and organizational diversity, and conducts unconscious bias training.

Correll fears the chilling effect could extend beyond what's specified in the executive order and threaten free speech in academia. It's a concern she's heard from fellow faculty across the country.

"There's a lot of worry that this is just step one, and that this is going to lead to restrictions in terms of what we teach in the classroom," Correll says. "It may take universities really pushing back as we go forward."

The executive order specifies that "divisive concepts" can be discussed in an academic setting if they're done "in an objective manner and without endorsement."

The president's action is both "stunningly off-base" and ill-timed, Correll says: "It's an executive order that has come out at a time when interest in diversity training is higher than it's ever been, at a time when for the first time in polling history, the majority of Americans think that racism in our country is a serious problem. So people are paying attention. And at this moment, the executive order comes out. I don't think that's coincidental."

Of course, if Democratic presidential nominee Joe Biden were to take office in January, he could undo the order with the stroke of a pen.

The Biden campaign declined to say whether he would rescind the order but told NPR, "Vice President Biden stands firmly against discrimination of all kinds and his administration will tackle systemic racism and other forms of discrimination across all of our laws, policies, and institutions."

Article 4 ([back to top](#))

Article Title: [The 2020 Election: Previewing the Potential for Shifts in Labor & Employment Law](#)

News Source: National Law Review

Reporter's Name: Rebecca L. Baker, Leslie Selig Byrd, Amy Karff Halevy, James H. Kizziar Jr., and Amber K. Dodds

Date: October 29, 2020

The 2020 Election: Previewing the Potential for Shifts in Labor & Employment Law

Thursday, October 29, 2020

As Election Day approaches, employers nationwide consider the changes that may come with a victory by Senator Joseph Biden in the Presidential race and/or shift in representation in the U.S. Senate. While we cannot be certain of what the future holds—either in the election or the subsequent legal landscape—the Bracewell Labor & Employment team has prepared the following information in an effort to highlight areas of employment law that may transform, in both the near and far term, in the event of such changes in the country's elected officials.

Labor Relations, Collective Bargaining and Union Organizing

Senator Biden strongly supports unions, stating that “Everything that defines what it means to live a good life and know you can take care of your family . . . is because of workers who organized unions and fought for worker protections.”

Specifically, he supports:

Provisions of the Protecting the Right to Organize Act (PRO Act) – which would institute financial penalties on companies that interfere with union organizing – and supports legislation that would hold company executives personally liable for such interference.

Funding a “dramatic increase” in the number of investigators at the National Labor Relations Board (NLRB).

Shorter timelines for union election campaigns and bans on mandatory employer meetings with employees during union organizing campaign.

Creating a federal right to union organizing and collective bargaining for all public sector employees.

Creating a cabinet-level working group that will “solely focus on promoting union organizing and collective bargaining.”

Extending the right to organize and bargain collectively to independent contractors.

While recent prior Democrat administrations were not able to strengthen organized labor in the way Senator Biden’s platform hopes to achieve, at a minimum, if Senator Biden were to become President, his appointments to the NLRB would return a pro labor union majority to the agency. In that case, the NLRB decisions and rule making would strengthen union organizing and limits on workplace rules.

Workplace Rules

President Donald Trump shifted the limits of employer workplace policies by undoing pro-union rulings the NLRB made under former President Barack Obama. A Biden Presidency would likely swing such rulings back to where they were in the Obama era.

Employees should look for potential changes in the following areas:

Facially neutral workplace rules: The Trump NLRB, in its *Boeing Company* decision, ruled that an employer does not necessarily violate the NLRA by maintaining a facially neutral work rule, policy or handbook provision that could be reasonably construed to interfere with union or other protected concerted activity protected under Section 7. This overruled *Lutheran Heritage Village-Livonia*, which under the Obama administration, was frequently applied to invalidate facially neutral employer rules adopted and applied for legitimate business reasons unrelated to an employee’s Section 7 activity. Examples of Section 7 activity include the right discuss wages and working conditions and the right to organize.

Workplace investigations: In its 2015 *Banner Health* decision, the NLRB prohibited employers from requiring employees to keep workplace investigations confidential. Last December, the Trump NLRB, in *Apogee Retail*, reversed the *Banner Health* decision, finding that employer policies that require confidentiality during internal investigations are per se lawful.

Employer e-mail: As a result of the NLRB’s 2014 *Purple Communications* decision, employers could not prohibit employees from accessing company email for union-related communications. The Trump NLRB, in its *Caesar’s Entertainment* decision, restored employer rights to prohibit use of its email systems for non-business purposes.

Employment Law Developments and Enforcement

Senator Biden supports the following legislation:

The Equality Act

A proposed law that would codify anti-discrimination protections for LGBTQ individuals in employment as well as other contexts, including housing.

Ensure protection from associational discrimination – discrimination on the basis of a person’s association with an individual in a protected class.

The Equality Act passed the House of Representatives but has not come to a vote in the Senate.

Paycheck Fairness Act

A proposed law that addresses wage discrimination on the basis of sex.

Amends equal pay provisions of the Fair Labor Standards Act to restrict use of the bona fide factor defense to wage discrimination claims, enhance non-retaliation provisions, make it unlawful to require an employee to sign a contract or waiver prohibiting the employee from disclosing information about the employee’s wages and increase civil penalties for violations of equal pay provisions.

Prohibits employers from screening job applicants based on their salary history or requiring salary history during the interview or hiring process.

Requires EEOC to issue regulations for collecting compensation and other employment data from employers according to the sex, race, and ethnic identity of employees for use in enforcing laws prohibiting pay discrimination.

The Paycheck Fairness Act passed the House of Representatives but has not come to a vote in the Senate.

Department of Labor: Independent Contractors, Wage Changes and Federal Contractors

As stated above, Senator Biden supports the PRO Act:

Increasing the standard to classify workers as independent contractors

Expanding the definition of “joint employer”

Criminal liability for employer interference with organizing efforts

DOL, Wage & Hour/FLSA: Recent Rules & Potential Changes

(Existing) Final Rule increasing the salary threshold to \$684/week

If the minimum wage is increased to \$15/hr, then the salary threshold would likely increase to retain a sufficient gap between exempt and non-exempt employees under the FLSA (\$15/hr = \$600/wk)

(Existing) Final Rule expanded Section 7(i) overtime exemption for retail and service industries by withdrawing the dated list of businesses with “no retail concept.”

Likely not affected

(Existing) Final Rule allows bonuses or other incentives to salaried, nonexempt employees without defeating the fluctuating workweek” method described in 29 CFR 778.114.

Likely not affected

(Existing) Final Rule on joint employer describing “vertical” and “horizontal” joint employer scenarios (enjoined by federal district court) to the extent the DOL too narrowly defined joint employment)

This may be challenged.

Proposed rule adopting the “economic realities” test for independent contractors and emphasizing the factors of control and opportunity for profit and loss.

This may be challenged.

Senator Biden’s general proposals:

Increased penalties (in addition to current FLSA remedies and liquidated damages) for worker misclassification.

Senator Biden proposes to increase DOL/FLSA enforcement effort.

Senator Biden proposes to increase staffing of agencies.

Senator Biden proposes greater collaborative enforcement efforts between various labor agencies (NLRB, EEOC, IRS, State unemployment and labor agencies).

Executive Orders & the Office of Federal Contract Compliance Programs (OFCCP)

Executive Order 13950, “Combating Race and Sex Stereotyping” prohibiting federal contractors from instilling race or sex stereotyping or scapegoating in workplace diversity and inclusion training

Likely withdrawn by Senator Biden administration

Notably, the OFCCP under the Trump Administration collected greater enforcement fines than expected - e.g., OFCCP collected more than \$21 Million from Dell Technologies, Goldman Sachs and Bank of America primarily relating to gender/race wage disparity claims.

COVID Response – Economic and Public Health Policies Affecting Employers

From “Unemployment” to “Employment Insurance”:

Focus on maintaining employment at reduced hours, with federal government supplementing worker wages

100% federal financing for short-time compensation plan that is “automatically extended based on economic and health conditions” (without the vote of Congress)

Tax credit for employer’s extra health care costs

COVID:

Create Pandemic Testing Board to “guarantee regular, reliable and free access to testing for all, including every worker called back to the job”

Hire 100,000 Americans to conduct contact tracing

Ensure emergency paid leave for all who contract COVID-19 or need to care for a loved one with COVID-19

“Ensure worker protection and accountability” including tasking OSHA with “setting and enforcing a rigorous emergency temporary standard”

Equip small business with a “restart package” to retain and rehire workers

Schools – Issuing “basic, objective criteria” at the federal level to guide school reopening and passing significant emergency federal funding for school.

Senator Biden has committed to reinstating a variety workplace safety and health regulations altered during the Trump administration, such as regulations requiring companies to report their workplace injuries.

He also has promised to increase the number of investigators in the Occupational Safety and Health Administration (OSHA) and the Mine Safety Health and Administration (MSHA) and to direct OSHA to substantially expand its enforcement efforts.

Employment Agreement Restrictions

Senator Biden has promised to will work with Congress to eliminate all non-compete agreements, except the very few that are absolutely necessary to protect a narrowly defined category of trade secrets, and outright ban all no-poaching agreements.

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Article 5 (back to top)

Article Title: Trump administration sued by civil rights groups over executive order restricting diversity training

News Source: USA Today

Reporter's Name: Jessica Guynn

Date: October 29, 2020

Trump administration sued by civil rights groups over executive order restricting diversity training

Jessica Guynn, USA TODAY Published 3:52 p.m. ET Oct. 29, 2020 | Updated 10:29 p.m. ET Oct. 29, 2020

Companies across the country have been speaking out against racism, but less than 2% of top executives at 50 largest companies are Black. USA TODAY

Civil rights groups filed a lawsuit challenging President Donald Trump's executive order restricting government contractors and federal agencies from offering diversity training that the president says is "divisive" and "un-American."

The complaint filed Thursday by the NAACP Legal Defense Fund, the National Urban League and the National Fair Housing Alliance in federal court in Washington, D.C., argues the executive order violates free speech rights in an "extraordinary and unprecedented act by the Trump administration to undermine efforts to foster diversity and inclusion in the workplace."

The Trump administration is "trying to keep individuals from even expressing their thoughts," Ajmel Quereshi, senior counsel with the NAACP Legal Defense fund, told USA TODAY. "What this case does is challenge this executive order on both First Amendment grounds as well as Equal Protection grounds specifically because it tries to keep any federal contractor, federal employee or federal grantee from speaking about the history of systemic discrimination in the United States and its continuing effects."

The Labor Department said the elimination of "race and sex stereotyping and scapegoating in employment" is "a key civil rights priority of the Trump Administration."

"The Department of Labor is confident it will prevail in this lawsuit and that President Trump's Executive Order will be found lawful," the Labor Department said in a statement to USA TODAY.

Trump executive order's 'chilling effect'

Trump's executive order comes as corporate America steps up efforts to address racial disparities following the death of George Floyd, a Black man, under the knee of white officer in Minneapolis in May.

Critics say the executive order is a broadside against diversity and inclusion programs that will impair efforts by business and government to reverse decades-long patterns of discrimination and exclusion. A USA TODAY investigation found that more than 55 years after the Civil Rights Act, less than 2% of the top executives at the nation's largest companies are Black.

'It's already having a massive effect': Corporate America demands Trump rescind executive order on diversity

Microsoft, Wells Fargo diversity probed: Diversity initiatives to hire more Black leaders investigated by Trump administration

The ripple effects from the executive order have also reached educational institutions, nonprofits and others who have federal contracts or plan to apply for them.

By forcing government agencies or contractors to choose between censoring speech or forfeiting government contracts, "the order strikes at the heart of those critical efforts by government and nongovernment actors – including trainings and other forms of private speech in the workplace – to eradicate race and sex stereotyping and other continuing manifestations of entrenched discrimination and bias against people of color, women, and LGBTQ individuals," the complaint alleges.

Trump administration challenges critical race theory

A White House memo in late September suggested rooting out "ideologies that label entire groups of Americans as inherently racist or evil" in diversity training materials by searching for keywords such as "white privilege," "systemic racism," "intersectionality" and "unconscious bias."

The executive order's stated goal is "to combat offensive and anti-American race and sex stereotyping and scapegoating."

Asked about his executive order during the first presidential debate, Trump said: "They were teaching people that our country is a horrible place, it's a racist place. And they were teaching people to hate our country. And I'm not gonna allow that to happen."

The target of the executive order is critical race theory and stems from appearances by conservative activist Christopher Rufo on Fox News' "Tucker Carlson Tonight."

Critical race theory teaches that racism pervades government and other American institutions, giving white people an advantage.

"What I've discovered is that critical race theory has become, in essence, the default ideology of the federal bureaucracy and is now being weaponized against the American people," Rufo, director of the Discovery Institute's Center on Wealth & Poverty in Seattle said on Carlson's show.



Civil rights groups filed a lawsuit challenging Donald Trump's executive order restricting government contractors and federal agencies from offering diversity training that the president says is "divisive" and "un-American" diversity. (Photo: Patrick Semansky, AP)

Rufo celebrated achieving his goal– "...persuading the President of the United States to abolish critical race theory in the federal government" – posting on Facebook moments after Trump issued the order.

Corporate diversity efforts in line of Trump fire

The Trump administration is not just pushing back against the belief that American society is inherently racist. It's also challenging corporate efforts to rebalance the scales by elevating more Black executives and executives of color into leadership ranks.

In recent weeks, the Office of Federal Contract Compliance Programs, which oversees federal contractors for the Labor Department, has questioned whether diversity initiatives at Microsoft and Wells Fargo to double the ranks of Black managers and executives over the next five years violate federal laws barring discrimination based on race. Both corporations say they believe their initiatives comply with those laws.

Guidance issued by the Office of Federal Contract Compliance Programs outlines strict but vague requirements for complying with Trump's executive order on diversity and inclusion training that seem to cover essential and foundational concepts, Turner said.

The agency has set up a hotline so that any individual or group can file a complaint against a government agency or federal contractor for perceived violations by phone or email. Third parties can also file a complaint on behalf of an individual or a group, the guidance says.

With Appreciation,

Shenita A. Benjamin
Sr. Executive Assistant

Office of Federal Contract Compliance Programs

U.S. Department of Labor

P: (202) **b(6)**

Benjamin.Shenita.A@dol.gov



Message

From: Seely, Christopher - OFCCP [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=6B2B2010AAF743CEB373A758390001A1-SEELY, CHRI]
Sent: 10/30/2020 12:55:19 PM
To: Williams, Tina T - OFCCP [b(6)]@dol.gov [b(6)]@dol.gov
Subject: FW: Friday Morning Press Releases/Daily News Clippings: October 30, 2020

FYI

Chris Seely
202-320-2531

From: Lujan, Theresa - OFCCP [b(6)]@dol.gov>
Sent: Friday, October 30, 2020 9:53 AM
To: Seely, Christopher - OFCCP [b(6)]@dol.gov>
Subject: RE: Friday Morning Press Releases/Daily News Clippings: October 30, 2020

Hi, the media reports have generated 13 calls from individuals about EO 13950, all opposing it.

From: Seely, Christopher - OFCCP [b(6)]@dol.gov>
Sent: Friday, October 30, 2020 7:45 AM
To: zzOFCCP-NO-DPPD-ALL <zzOFCCP-NO-DPPD-ALL@dol.gov>
Subject: FW: Friday Morning Press Releases/Daily News Clippings: October 30, 2020

Morning – Walter is out today. Please see today's news clippings.

Chris Seely
202 [b(6)]

From: Benjamin, Shenita A - OFCCP CTR <Benjamin.Shenita.A@dol.gov>
Sent: Friday, October 30, 2020 7:34 AM
To: Leen, Craig - OFCCP <Leen.Craig@DOL.gov>; Gaglione, Robert J - OFCCP <Gaglione.Robert.J@dol.gov>; Davidson, Patricia J - OFCCP <[b(6)]@dol.gov>
Cc: LaJeunesse, Robert - OFCCP <[b(6)]@dol.gov>; Collins, Aida Y - OFCCP <[b(6)]@dol.gov>; Corbin, Jonide - OFCCP <[b(6)]@dol.gov>; Harewood, Fiona A - OFCCP <[b(6)]@dol.gov>; Hodge, Michele - OFCCP <[b(6)]@dol.gov>; Navarro, Carmer - OFCCP <[b(6)]@dol.gov>; Rodriguez, Luis N - OFCCP <[b(6)]@dol.gov>; Sen Diana S - OFCCP <[b(6)]@dol.gov>; Jane - OFCCP <[b(6)]@dol.gov>; Smith, Kelley - OFCCP <[b(6)]@dol.gov>; Gaglione, Robert J - OFCCP <Gaglione.Robert.J@dol.gov>; Gean, Lissette - OFCCP <[b(6)]@dol.gov>; Kaiser, Javaid - OFCCP <Kaiser.Javaid@dol.gov>; Kraak, Margaret - OFCCP <[b(6)]@dol.gov>; Spalding, Candice - OFCCP <[b(6)]@dol.gov>; Williams, Tina T - OFCCP <[b(6)]@dol.gov>; Leung, Kenneth - OFCCP <[b(6)]@dol.gov>; LaJeunesse, Robert - OFCCP <[b(6)]@dol.gov>; Seely, Christopher - OFCCP <[b(6)]@dol.gov>; Parker, Walter - OFCCP <[b(6)]@dol.gov>; Tretheway, Andrea - OFCCP <Tretheway.Andrea.L@dol.gov>; Speer, Melissa - OFCCP <Speer.Melissa@dol.gov>; Stergio, Marcus - OFCCP <[b(6)]@dol.gov>; Mimnaugh, Matthew F - OFCCP <Mimnaugh.Matthew.F@dol.gov>; Price-Livingston, Glenda - OFCCP <[b(6)]@dol.gov>
Subject: Friday Morning Press Releases/Daily News Clippings: October 30, 2020

Friday Morning Press Releases: October 30, 2020

Date of Press Release	Company Name	Hyperlink to Release
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October 30, 2020	Office of Federal Contract Compliance	<u>U.S. Department of Labor and Becton, Dickinson and Company Enter Agreement to Resolve Alleged Compensation Discrimination</u>
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Friday Morning News Clips: October 30, 2020

Article #	Paper	Title
1	Bloomberg Law	<u>Trump's Diversity Training Ban Draws NAACP Legal Challenge (1)</u>
2	Bloomberg Law	<u>Trump Rule Leads Contractors to Cut Diversity, Bias Training</u>
3	NPR	<u>Agencies, Contractors Suspend Diversity Training To Avoid Violating Trump Order</u>
4	National Law Review	<u>The 2020 Election: Previewing the Potential for Shifts in Labor & Employment Law</u>
5	USA Today	<u>Trump administration sued by civil rights groups over executive order restricting diversity training</u>

Article 1 ([back to top](#)) – [hyperlink to above](#)

Article Title: Trump's Diversity Training Ban Draws NAACP Legal Challenge (1)

News Source: Bloomberg Law

Reporter's Name: Mike Leonard, Paige Smith

Date: October 29, 2020

[Daily Labor Report®](#)



President Donald Trump speaks during a news conference at the White House on July 23, 2020.
Photographer: Yuri Gripas/Abaca/Bloomberg

Trump's Diversity Training Ban Draws NAACP Legal Challenge (1)

By [Mike Leonard](#) and [Paige Smith](#)

Oct. 29, 2020, 2:19 PM; Updated: Oct. 29, 2020, 3:59 PM

- **COURT:** D.D.C.
- **TRACK DOCKET:** [No. 20-cv-3121](#) (Bloomberg Law Subscription)
- **JUDGE:** [Amit P. Mehta](#) (Bloomberg Law Subscription)

The NAACP and other civil rights groups hit the Trump administration Thursday with a constitutional challenge to the president's recent [executive order](#) banning federal contractors and grant recipients from holding workplace diversity trainings that discuss "divisive" topics like race and sex "stereotyping and scapegoating."

"The order identifies viewpoints that the Trump administration dislikes—such as the existence of white privilege, implicit bias, systemic racism, structural inequalities, or intersectional experiences of discrimination—and attempts to purge them from the national conversation," the lawsuit says. "This targeted censorship violates the First Amendment."

The proposed class action was filed on behalf of the National Urban League and the National Fair Housing Alliance, two civil rights groups, in the U.S. District Court for the District of Columbia. It targets Executive Order 13950, titled "Combating Race and Sex Stereotyping," which President Trump signed in late September.

The U.S. Department of Labor has been tasked with enforcing the order, which outlaws any training that suggests a worker is "inherently racist, sexist, or oppressive, whether consciously or unconsciously."

The DOL's Office of Federal Contract Compliance Programs has established [complaint hotlines](#) where workers can report instances of "offensive" trainings, and is seeking [public input](#) and sample training materials from federal contractors.

Craig Leen, who heads the contractor watchdog agency, previously said not all implicit or unconscious bias training is banned by the order. But he did say it outlaws programs on "white privilege" or "white fragility."

The complaint calls the order "an extraordinary and unprecedented" act involving a "broad-based prohibition of private speech on matters of immense public concern" that "strikes at the heart" of efforts "to eradicate race and sex stereotyping" against "people of color, women, and LGBTQ individuals."

"The depth and scope of EO 13950's constitutional flaws are alarming and, if left unremedied, will erode the core principles of our democracy and the foundations of our pluralistic society," the suit says.

It's also unenforceably vague, according to the complaint.

In addition to Trump himself, it targets the Labor Department and Labor Secretary Eugene Scalia.

The case landed on the docket of Judge Amit P. Mehta, an Obama appointee who [was assigned last week](#) to oversee the Justice Department's [landmark antitrust lawsuit against Google](#).

Cause of Action: First Amendment; due process and equal protection clauses of the Fifth Amendment.

Relief: An injunction declaring the executive order unlawful and blocking it; costs and fees.

Potential Class Size: "All persons and entities who contract" or "bid to contract" with the federal government—as well as all recipients of, or applicants for, federal grants—that "offer or intend to offer" workplace diversity training sessions meant to "examine and dismantle racism and gender discrimination."

Response: The White House and Labor Department didn't immediately respond to requests for comment Thursday.

Attorneys: The civil rights groups are represented by NAACP Legal Defense and Educational Fund Inc.

The case is Nat'l Urban League v. Trump, D.D.C., No. 20-cv-3121, complaint filed 10/29/20.

(Updated with additional reporting.)

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Article Title: Trump Rule Leads Contractors to Cut Diversity, Bias Training

News Source: Bloomberg Law

Reporter's Name: Paige Smith and Jeff Green

Date: October 30, 2020

[Daily Labor Report@](#)



Chris Kleponis/Polaris/Bloomberg

Trump Rule Leads Contractors to Cut Diversity, Bias Training

By Paige Smith and Jeff Green

Oct. 30, 2020, 5:00 AM

President Donald Trump's recent attempt to curb corporate diversity training will linger even if he loses Tuesday's election to former Vice President Joe Biden. Already, federal contractors are unsure of what they can say about race.

More than 300 events, training programs, research projects and other diversity-related activities have been delayed or canceled because of concern about a Sept. 22 executive order aimed at banning federal contractors and agencies from using terms in diversity training that the administration considers divisive and illegal, according to the African American Policy Forum, a social justice think tank. A Labor Department official said last week that the agency's already received more than 100 complaints via a government hotline to report possible violations.

The executive order, which bars the use of concepts such as "White privilege" and "White fragility," runs counter to a rush by corporations to enhance diversity efforts after the police killing of George Floyd in May. Many executives have pledged to tackle structural or implicit racism, which the Trump order also flagged as potentially illegal. The prospect of scrutiny from the government calls such initiatives into question, and casts a shadow that could long outlast the Trump administration.

The U.S. Chamber of Commerce and a group of more than 150 companies have asked that the order be rescinded. The NAACP Legal Defense and Educational Fund also said Thursday that it is representing the National Urban League and the Fair Housing Alliance in a lawsuit over the order. Other suits may follow, said Shirley Wilcher, who was head of the U.S. Department of Labor's Office of Federal Contract Compliance Programs during the Clinton administration. She's now the executive director of the American Association for Access, Equity, and Diversity.

Even if Biden wins, companies will still have to be careful with what kinds of training materials they use, said Laura Mitchell, a principal with the law firm Jackson Lewis. She works with employers dealing with the OFCCP, which is asking federal contractors to turn over training materials and is fielding complaints through the new hotline.

The White House frames the new rule as mirroring existing anti-discrimination statutes, including Executive Order 11246 from 1965.

"It is unacceptable for taxpayer dollars to fund workplace training that promotes racial stereotypes or encourages discrimination based on the color of an employee's skin," White House spokesman Judd Deere said in an email Thursday.

By trying to change the interpretation of established policy, the administration could shape corporate training for years to come, even if Trump's successor rescinds the September executive order.

The complaint hotline probably is here to stay, said Mickey Silberman, an attorney who represents federal contractors in OFCCP matters. Under any administration, an agency charged with fighting discrimination wouldn't want to be seen eliminating a hotline that lets workers submit complaints.

For now, he said, companies have either put diversity training on hold until after the election, revised their training materials to meet the mandate or decided to ignore the order.

Sterling Cruz-Herr, founder of TransClue, a training and consulting company focused on equality for transgender and non-binary people, said the company was among the groups already affected by the rule. TransClue had a training session scheduled Oct. 7 for employees of the U.S. Environmental Protection Agency, but it was postponed because of the order.

"It's not so clear what fits and doesn't fit," Cruz-Herr said. The training would have offered tips on how the resilience of LGBTQ people against discrimination can be a pattern for people navigating the stress of Covid-19 as well as racial protests, they said in an interview.

Schools also might have to adjust, dropping certain references to slavery and racism in history lessons, said Vincent Wong, research associate with the African American Policy Forum. The group used a member mailing list and social media to gather examples of programs and materials being reconsidered. “It’s spread like wildfire,” he said.

Wong sees the executive order as a sign of the conservative reaction against the culture’s growing recognition of systemic racism. He expects the rule to resonate for years.

“It’s not going to go away if Trump loses the election,” Wong said. “All of the infrastructure — that’s going to remain.”

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Article 3 ([back to top](#))

Article Title: Agencies, Contractors Suspend Diversity Training To Avoid Violating Trump Order

News Source: NPR

Reporter’s Name: Melissa Block

Date: October 30, 2020

Agencies, Contractors Suspend Diversity Training To Avoid Violating Trump Order

October 30, 2020 5:00 AM ET

Heard on Morning Edition



Melissa Block



President Trump addresses a rally this week at Capital Region International Airport in Lansing, Mich. **Brendan Smialowski/AFP via Getty Images hide caption**

toggle caption

Brendan Smialowski/AFP via Getty Images

President Trump addresses a rally this week at Capital Region International Airport in Lansing, Mich.

Brendan Smialowski/AFP via Getty Images

Three civil rights groups filed a federal class-action lawsuit Thursday challenging the Trump administration's recent crackdown on diversity training.

The NAACP Legal Defense and Educational Fund, National Urban League and National Fair Housing Alliance call President Trump's Sept. 22 executive order "chillingly punitive" ensorship that violates guarantees of free speech, equal protection and due process.

A few weeks ago, I BANNED efforts to indoctrinate government employees with divisive and harmful sex and race-based ideologies. Today, I've expanded that ban to people and companies that do business...

— Donald J. Trump (@realDonaldTrump) September 22, 2020

Trump's executive order prohibits certain diversity training that the administration says amounts to "divisive, anti-American propaganda."

In the five weeks since the order was signed, critics say it has had a widespread chilling effect as federal agencies, the military, government contractors and grant recipients scramble to figure out how to comply.

The order targets diversity training grounded in what the administration terms a "malign ideology" that "threatens to infect core institutions of our country."

Such an ideology, the order says, "is rooted in the pernicious and false belief that America is an irredeemably racist and sexist country."

The order applies broadly to federal agencies and the military as well as government contractors and recipients of federal grants, including universities and nonprofits.

Article continues after sponsor message

All three of these trainings from @StateDept, @EPA, and @DeptVetAffairs have been cancelled. Thanks for the help. <https://t.co/5qkSgnGEtO>

— Russ Vought (@RussVought45) September 22, 2020

The departments of State, Justice and Veterans Affairs are among those that have suspended all diversity and inclusion training programs while they review their content. Many companies and universities have done the same.

The executive order also directs the Department of Labor to establish a government hotline encouraging "employees and other concerned members of the public" to ask questions or complain about diversity training they find offensive or potentially unlawful, for possible investigation. The hotline has received more than 140 responses in the five weeks since it was set up.

The plaintiffs who filed the lawsuit this week say that hotline carries with it "alarming ... echoes of McCarthyism."

A White House memorandum warns that contractors found in violation could have their contracts suspended or canceled. Noncompliance by federal employees, the memo says, "will result in consequences, which may include adverse action."

Asked to explain the reasoning behind the order at the Sept. 29 presidential debate, Trump said, "They were teaching people that our country is a horrible place. It's a racist place. And they were teaching people to hate our country. And I'm not going to allow that to happen."

Factbase Videos YouTube

"A really scary place to be"

When Michelle Kim first heard about Trump's executive order, which is titled "Combating Race and Sex Stereotyping," she says, "My first immediate thought was, here we go."

Kim is co-founder and CEO of the company Awaken, based in Oakland, Calif., which provides workshops on diversity, equity and inclusion to businesses.

Her apprehension proved justified. It wasn't long after the order was issued that she heard from a concerned corporate client, asking Kim to review her materials to ensure they did not include any of the prohibited concepts.

Terms the Trump administration has singled out as potentially problematic include "white privilege," "systemic racism," "unconscious bias," "intersectionality," "racial humility" and "critical race theory."

Kim told her client that while she could theoretically avoid use of the term "white privilege" in her talk, if she did so, "I would be agreeing with the spirit of the ask, which is problematic on its own."



Race

Trump Tells Agencies To End Trainings On 'White Privilege' And 'Critical Race Theory'

She offered to nullify her speaking agreement, but in the end, she was able to assuage her client's concerns. Her talk on power and privilege in the workplace went forward.

Still, Kim says, damage has been done: "Instead of us being focused on actually fighting racism and being anti-racist, now we are scrambling to figure out the legal ramifications of it. I think in many ways the executive order has succeeded in creating that distraction."

The Trump administration's order, Kim believes, is founded on a gross misunderstanding of diversity training: the mistaken belief that it's all about blaming and vilifying white people. (The word "scapegoating" appears seven times in the executive order.)

That misconception is not just wrong, Kim says, but it's also dangerous. "Somehow we've gotten to a place where we believe fighting against racism is anti-patriotic," she says. "That's where we are as a society. And that's a really scary place to be."

"It's a dog whistle"

Joelle Emerson, co-founder and CEO of the diversity, equity and inclusion strategy firm Paradigm, admits to being "extremely naive" when she first read the executive order.

"I didn't believe that any of our clients would be fazed by this," Emerson says. "I was like, 'This is clearly propaganda. It's fascist propaganda. It's a dog whistle to Trump's base, and organizations that care about diversity, equity and inclusion are going to be just as offended by this order as we are.' And I was wrong."

As a result of the order, Emerson lost a client, a government contractor that decided to put all of its diversity training on hold.

The president's crackdown on diversity training is part of a broader culture war, Emerson says, a battle that plays on people's fears about what diversity represents. That fear, she says, is that "diversity is not for you. Diversity training is all about making you feel guilty about who you are, depriving you of your rights."

"Of course," she says, "none of that is accurate, but that's a fear that many white people have about diversity efforts. And this seems to be speaking directly to that fear, and trying very hard to tap into that fear, and sow division and discord."



Politics

Trump Expands Ban On Racial Sensitivity Training To Federal Contractors

At the employment law firm Littler Mendelson, Chris Gokturk has been fielding a flood of calls from companies that have government contracts.

"It's been a rough few weeks!" Gokturk says. "There's not enough hours in the day."

Gokturk helps businesses with their affirmative action and diversity programs, and since the order came out, her clients have had a lot of questions.

"The most common thing is, should we stop all of our diversity training? Should we just stop?" she says. "And, at first I said, 'No. You've vetted your training, you always review it and everything else.' "

Gokturk pauses.

"And then the hotline went up."

That email and telephone government hotline encourages people to submit information confidentially on training programs that involve "prohibited race or sex stereotyping or scapegoating."

"This is asking Americans to be surveilling other Americans, and this is — y'know, it's chilling. It's absolutely chilling," Stanford University sociology professor Shelley Correll says.

She studies gender and organizational diversity, and conducts unconscious bias training.

Correll fears the chilling effect could extend beyond what's specified in the executive order and threaten free speech in academia. It's a concern she's heard from fellow faculty across the country.

"There's a lot of worry that this is just step one, and that this is going to lead to restrictions in terms of what we teach in the classroom," Correll says. "It may take universities really pushing back as we go forward."

The executive order specifies that "divisive concepts" can be discussed in an academic setting if they're done "in an objective manner and without endorsement."

The president's action is both "stunningly off-base" and ill-timed, Correll says: "It's an executive order that has come out at a time when interest in diversity training is higher than it's ever been, at a time when for the first time in polling history, the majority of Americans think that racism in our country is a serious problem. So people are paying attention. And at this moment, the executive order comes out. I don't think that's coincidental."

Of course, if Democratic presidential nominee Joe Biden were to take office in January, he could undo the order with the stroke of a pen.

The Biden campaign declined to say whether he would rescind the order but told NPR, "Vice President Biden stands firmly against discrimination of all kinds and his administration will tackle systemic racism and other forms of discrimination across all of our laws, policies, and institutions."

Article 4 ([back to top](#))

Article Title: [The 2020 Election: Previewing the Potential for Shifts in Labor & Employment Law](#)

News Source: National Law Review

Reporter's Name: Rebecca L. Baker, Leslie Selig Byrd, Amy Karff Halevy, James H. Kizziar Jr., and Amber K. Dodds

Date: October 29, 2020

The 2020 Election: Previewing the Potential for Shifts in Labor & Employment Law

Thursday, October 29, 2020

As Election Day approaches, employers nationwide consider the changes that may come with a victory by Senator Joseph Biden in the Presidential race and/or shift in representation in the U.S. Senate. While we cannot be certain of what the future holds—either in the election or the subsequent legal landscape—the Bracewell Labor & Employment team has prepared the following information in an effort to highlight areas of employment law that may transform, in both the near and far term, in the event of such changes in the country's elected officials.

Labor Relations, Collective Bargaining and Union Organizing

Senator Biden strongly supports unions, stating that “Everything that defines what it means to live a good life and know you can take care of your family . . . is because of workers who organized unions and fought for worker protections.”

Specifically, he supports:

Provisions of the Protecting the Right to Organize Act (PRO Act) – which would institute financial penalties on companies that interfere with union organizing – and supports legislation that would hold company executives personally liable for such interference.

Funding a “dramatic increase” in the number of investigators at the National Labor Relations Board (NLRB).

Shorter timelines for union election campaigns and bans on mandatory employer meetings with employees during union organizing campaign.

Creating a federal right to union organizing and collective bargaining for all public sector employees.

Creating a cabinet-level working group that will “solely focus on promoting union organizing and collective bargaining.”

Extending the right to organize and bargain collectively to independent contractors.

While recent prior Democrat administrations were not able to strengthen organized labor in the way Senator Biden’s platform hopes to achieve, at a minimum, if Senator Biden were to become President, his appointments to the NLRB would return a pro labor union majority to the agency. In that case, the NLRB decisions and rule making would strengthen union organizing and limits on workplace rules.

Workplace Rules

President Donald Trump shifted the limits of employer workplace policies by undoing pro-union rulings the NLRB made under former President Barack Obama. A Biden Presidency would likely swing such rulings back to where they were in the Obama era.

Employees should look for potential changes in the following areas:

Facially neutral workplace rules: The Trump NLRB, in its *Boeing Company* decision, ruled that an employer does not necessarily violate the NLRA by maintaining a facially neutral work rule, policy or handbook provision that could be reasonably construed to interfere with union or other protected concerted activity protected under Section 7. This overruled *Lutheran Heritage Village-Livonia*, which under the Obama administration, was frequently applied to invalidate facially neutral employer rules adopted and applied for legitimate business reasons unrelated to an employee’s Section 7 activity. Examples of Section 7 activity include the right discuss wages and working conditions and the right to organize.

Workplace investigations: In its 2015 *Banner Health* decision, the NLRB prohibited employers from requiring employees to keep workplace investigations confidential. Last December, the Trump NLRB, in *Apogee Retail*, reversed the *Banner Health* decision, finding that employer policies that require confidentiality during internal investigations are per se lawful.

Employer e-mail: As a result of the NLRB’s 2014 *Purple Communications* decision, employers could not prohibit employees from accessing company email for union-related communications. The Trump NLRB, in its *Caesar’s Entertainment* decision, restored employer rights to prohibit use of its email systems for non-business purposes.

Employment Law Developments and Enforcement

Senator Biden supports the following legislation:

The Equality Act

A proposed law that would codify anti-discrimination protections for LGBTQ individuals in employment as well as other contexts, including housing.

Ensure protection from associational discrimination – discrimination on the basis of a person’s association with an individual in a protected class.

The Equality Act passed the House of Representatives but has not come to a vote in the Senate.

Paycheck Fairness Act

A proposed law that addresses wage discrimination on the basis of sex.

Amends equal pay provisions of the Fair Labor Standards Act to restrict use of the bona fide factor defense to wage discrimination claims, enhance non-retaliation provisions, make it unlawful to require an employee to sign a contract or waiver prohibiting the employee from disclosing information about the employee’s wages and increase civil penalties for violations of equal pay provisions.

Prohibits employers from screening job applicants based on their salary history or requiring salary history during the interview or hiring process.

Requires EEOC to issue regulations for collecting compensation and other employment data from employers according to the sex, race, and ethnic identity of employees for use in enforcing laws prohibiting pay discrimination.

The Paycheck Fairness Act passed the House of Representatives but has not come to a vote in the Senate.

Department of Labor: Independent Contractors, Wage Changes and Federal Contractors

As stated above, Senator Biden supports the PRO Act:

Increasing the standard to classify workers as independent contractors

Expanding the definition of “joint employer”

Criminal liability for employer interference with organizing efforts

DOL, Wage & Hour/FLSA: Recent Rules & Potential Changes

(Existing) Final Rule increasing the salary threshold to \$684/week

If the minimum wage is increased to \$15/hr, then the salary threshold would likely increase to retain a sufficient gap between exempt and non-exempt employees under the FLSA (\$15/hr = \$600/wk)

(Existing) Final Rule expanded Section 7(i) overtime exemption for retail and service industries by withdrawing the dated list of businesses with “no retail concept.”

Likely not affected

(Existing) Final Rule allows bonuses or other incentives to salaried, nonexempt employees without defeating the fluctuating workweek” method described in 29 CFR 778.114.

Likely not affected

(Existing) Final Rule on joint employer describing “vertical” and “horizontal” joint employer scenarios (enjoined by federal district court) to the extent the DOL too narrowly defined joint employment)

This may be challenged.

Proposed rule adopting the “economic realities” test for independent contractors and emphasizing the factors of control and opportunity for profit and loss.

This may be challenged.

Senator Biden’s general proposals:

Increased penalties (in addition to current FLSA remedies and liquidated damages) for worker misclassification.

Senator Biden proposes to increase DOL/FLSA enforcement effort.

Senator Biden proposes to increase staffing of agencies.

Senator Biden proposes greater collaborative enforcement efforts between various labor agencies (NLRB, EEOC, IRS, State unemployment and labor agencies).

Executive Orders & the Office of Federal Contract Compliance Programs (OFCCP)

Executive Order 13950, “Combating Race and Sex Stereotyping” prohibiting federal contractors from instilling race or sex stereotyping or scapegoating in workplace diversity and inclusion training

Likely withdrawn by Senator Biden administration

Notably, the OFCCP under the Trump Administration collected greater enforcement fines than expected - e.g., OFCCP collected more than \$21 Million from Dell Technologies, Goldman Sachs and Bank of America primarily relating to gender/race wage disparity claims.

COVID Response – Economic and Public Health Policies Affecting Employers

From “Unemployment” to “Employment Insurance”:

Focus on maintaining employment at reduced hours, with federal government supplementing worker wages

100% federal financing for short-time compensation plan that is “automatically extended based on economic and health conditions” (without the vote of Congress)

Tax credit for employer’s extra health care costs

COVID:

Create Pandemic Testing Board to “guarantee regular, reliable and free access to testing for all, including every worker called back to the job”

Hire 100,000 Americans to conduct contact tracing

Ensure emergency paid leave for all who contract COVID-19 or need to care for a loved one with COVID-19

“Ensure worker protection and accountability” including tasking OSHA with “setting and enforcing a rigorous emergency temporary standard”

Equip small business with a “restart package” to retain and rehire workers

Schools – Issuing “basic, objective criteria” at the federal level to guide school reopening and passing significant emergency federal funding for school.

Senator Biden has committed to reinstating a variety workplace safety and health regulations altered during the Trump administration, such as regulations requiring companies to report their workplace injuries.

He also has promised to increase the number of investigators in the Occupational Safety and Health Administration (OSHA) and the Mine Safety Health and Administration (MSHA) and to direct OSHA to substantially expand its enforcement efforts.

Employment Agreement Restrictions

Senator Biden has promised to will work with Congress to eliminate all non-compete agreements, except the very few that are absolutely necessary to protect a narrowly defined category of trade secrets, and outright ban all no-poaching agreements.

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Article 5 (back to top)

Article Title: Trump administration sued by civil rights groups over executive order restricting diversity training

News Source: USA Today

Reporter's Name: Jessica Guynn

Date: October 29, 2020

Trump administration sued by civil rights groups over executive order restricting diversity training

Jessica Guynn, USA TODAY Published 3:52 p.m. ET Oct. 29, 2020 | Updated 10:29 p.m. ET Oct. 29, 2020

Companies across the country have been speaking out against racism, but less than 2% of top executives at 50 largest companies are Black. USA TODAY

Civil rights groups filed a lawsuit challenging President Donald Trump's executive order restricting government contractors and federal agencies from offering diversity training that the president says is "divisive" and "un-American."

The complaint filed Thursday by the NAACP Legal Defense Fund, the National Urban League and the National Fair Housing Alliance in federal court in Washington, D.C., argues the executive order violates free speech rights in an "extraordinary and unprecedented act by the Trump administration to undermine efforts to foster diversity and inclusion in the workplace."

The Trump administration is "trying to keep individuals from even expressing their thoughts," Ajmel Quereshi, senior counsel with the NAACP Legal Defense fund, told USA TODAY. "What this case does is challenge this executive order on both First Amendment grounds as well as Equal Protection grounds specifically because it tries to keep any federal contractor, federal employee or federal grantee from speaking about the history of systemic discrimination in the United States and its continuing effects."

The Labor Department said the elimination of "race and sex stereotyping and scapegoating in employment" is "a key civil rights priority of the Trump Administration."

"The Department of Labor is confident it will prevail in this lawsuit and that President Trump's Executive Order will be found lawful," the Labor Department said in a statement to USA TODAY.

Trump executive order's 'chilling effect'

Trump's executive order comes as corporate America steps up efforts to address racial disparities following the death of George Floyd, a Black man, under the knee of white officer in Minneapolis in May.

Critics say the executive order is a broadside against diversity and inclusion programs that will impair efforts by business and government to reverse decades-long patterns of discrimination and exclusion. A USA TODAY investigation found that more than 55 years after the Civil Rights Act, less than 2% of the top executives at the nation's largest companies are Black.

'It's already having a massive effect': Corporate America demands Trump rescind executive order on diversity

Microsoft, Wells Fargo diversity probed: Diversity initiatives to hire more Black leaders investigated by Trump administration

The ripple effects from the executive order have also reached educational institutions, nonprofits and others who have federal contracts or plan to apply for them.

By forcing government agencies or contractors to choose between censoring speech or forfeiting government contracts, "the order strikes at the heart of those critical efforts by government and nongovernment actors – including trainings and other forms of private speech in the workplace – to eradicate race and sex stereotyping and other continuing manifestations of entrenched discrimination and bias against people of color, women, and LGBTQ individuals," the complaint alleges.

Trump administration challenges critical race theory

A White House memo in late September suggested rooting out "ideologies that label entire groups of Americans as inherently racist or evil" in diversity training materials by searching for keywords such as "white privilege," "systemic racism," "intersectionality" and "unconscious bias."

The executive order's stated goal is "to combat offensive and anti-American race and sex stereotyping and scapegoating."

Asked about his executive order during the first presidential debate, Trump said: "They were teaching people that our country is a horrible place, it's a racist place. And they were teaching people to hate our country. And I'm not gonna allow that to happen."

The target of the executive order is critical race theory and stems from appearances by conservative activist Christopher Rufo on Fox News' "Tucker Carlson Tonight."

Critical race theory teaches that racism pervades government and other American institutions, giving white people an advantage.

"What I've discovered is that critical race theory has become, in essence, the default ideology of the federal bureaucracy and is now being weaponized against the American people," Rufo, director of the Discovery Institute's Center on Wealth & Poverty in Seattle said on Carlson's show.



Civil rights groups filed a lawsuit challenging Donald Trump's executive order restricting government contractors and federal agencies from offering diversity training that the president says is "divisive" and "un-American" diversity. (Photo: Patrick Semansky, AP)

Rufo celebrated achieving his goal– "...persuading the President of the United States to abolish critical race theory in the federal government" – posting on Facebook moments after Trump issued the order.

Corporate diversity efforts in line of Trump fire

The Trump administration is not just pushing back against the belief that American society is inherently racist. It's also challenging corporate efforts to rebalance the scales by elevating more Black executives and executives of color into leadership ranks.

In recent weeks, the Office of Federal Contract Compliance Programs, which oversees federal contractors for the Labor Department, has questioned whether diversity initiatives at Microsoft and Wells Fargo to double the ranks of Black managers and executives over the next five years violate federal laws barring discrimination based on race. Both corporations say they believe their initiatives comply with those laws.

Guidance issued by the Office of Federal Contract Compliance Programs outlines strict but vague requirements for complying with Trump's executive order on diversity and inclusion training that seem to cover essential and foundational concepts, Turner said.

The agency has set up a hotline so that any individual or group can file a complaint against a government agency or federal contractor for perceived violations by phone or email. Third parties can also file a complaint on behalf of an individual or a group, the guidance says.

With Appreciation,

Shenita A. Benjamin
Sr. Executive Assistant

Office of Federal Contract Compliance Programs

U.S. Department of Labor

P: (202) **b(6)**

Benjamin.Stetmiller@dol.gov



Message

From: Seely, Christopher - OFCCP [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=6B2B2010AAF743CEB373A758390001A1-SEELY, CHRI]
Sent: 10/30/2020 12:55:32 PM
To: Lujan, Theresa - OFCCP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9edff4c13bc3429f939d457747bb2e89-Lujan, Ther]
Subject: RE: Friday Morning Press Releases/Daily News Clippings: October 30, 2020

Thank you for the update.

Chris Seely

202 b(6)

From: Lujan, Theresa - OFCCP <b(6)@dol.gov>
Sent: Friday, October 30, 2020 9:53 AM
To: Seely, Christopher - OFCCP <b(6)@dol.gov>
Subject: RE: Friday Morning Press Releases/Daily News Clippings: October 30, 2020

Hi, the media reports have generated 13 calls from individuals about EO 13950, all opposing it.

From: Seely, Christopher - OFCCP <b(6)@dol.gov>
Sent: Friday, October 30, 2020 7:45 AM
To: zzOFCCP-NO-DPPD-ALL <zzOFCCP-NO-DPPD-ALL@dol.gov>
Subject: FW: Friday Morning Press Releases/Daily News Clippings: October 30, 2020

Morning – Walter is out today. Please see today's news clippings.

Chris Seely

202 b(6)

From: Benjamin, Shenita A - OFCCP CTR <Benjamin.Shenita.A@dol.gov>
Sent: Friday, October 30, 2020 7:34 AM
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Subject: Friday Morning Press Releases/Daily News Clippings: October 30, 2020

Friday Morning Press Releases: October 30, 2020

Date of Press Release	Company Name	Hyperlink to Release
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October 30, 2020	Office of Federal Contract Compliance	U.S. Department of Labor and Becton, Dickinson and Company Enter Agreement to Resolve Alleged Compensation Discrimination
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Friday Morning News Clips: October 30, 2020

Article #	Paper	Title
1	Bloomberg Law	Trump's Diversity Training Ban Draws NAACP Legal Challenge (1)
2	Bloomberg Law	Trump Rule Leads Contractors to Cut Diversity, Bias Training
3	NPR	Agencies, Contractors Suspend Diversity Training To Avoid Violating Trump Order
4	National Law Review	The 2020 Election: Previewing the Potential for Shifts in Labor & Employment Law
5	USA Today	Trump administration sued by civil rights groups over executive order restricting diversity training

Article 1 ([back to top](#)) -- [hyperlink to above](#)

Article Title: [Trump's Diversity Training Ban Draws NAACP Legal Challenge \(1\)](#)

News Source: Bloomberg Law

Reporter's Name: Mike Leonard, Paige Smith

Date: October 29, 2020

[Daily Labor Report®](#)



President Donald Trump speaks during a news conference at the White House on July 23, 2020.
Photographer: Yuri Gripas/Abaca/Bloomberg

Trump's Diversity Training Ban Draws NAACP Legal Challenge (1)

By [Mike Leonard](#) and [Paige Smith](#)

Oct. 29, 2020, 2:19 PM; Updated: Oct. 29, 2020, 3:59 PM

- **COURT:** D.D.C.
- **TRACK DOCKET:** [No. 20-cv-3121](#) (Bloomberg Law Subscription)
- **JUDGE:** [Amit P. Mehta](#) (Bloomberg Law Subscription)

The NAACP and other civil rights groups hit the Trump administration Thursday with a constitutional challenge to the president's recent [executive order](#) banning federal contractors and grant recipients from holding workplace diversity trainings that discuss "divisive" topics like race and sex "stereotyping and scapegoating."

"The order identifies viewpoints that the Trump administration dislikes—such as the existence of white privilege, implicit bias, systemic racism, structural inequalities, or intersectional experiences of discrimination—and attempts to purge them from the national conversation," the lawsuit says. "This targeted censorship violates the First Amendment."

The proposed class action was filed on behalf of the National Urban League and the National Fair Housing Alliance, two civil rights groups, in the U.S. District Court for the District of Columbia. It targets Executive Order 13950, titled "Combating Race and Sex Stereotyping," which President Trump signed in late September.

The U.S. Department of Labor has been tasked with enforcing the order, which outlaws any training that suggests a worker is "inherently racist, sexist, or oppressive, whether consciously or unconsciously."

The DOL's Office of Federal Contract Compliance Programs has established [complaint hotlines](#) where workers can report instances of "offensive" trainings, and is seeking [public input](#) and sample training materials from federal contractors.

Craig Leen, who heads the contractor watchdog agency, previously said not all implicit or unconscious bias training is banned by the order. But he did say it outlaws programs on "white privilege" or "white fragility."

The complaint calls the order "an extraordinary and unprecedented" act involving a "broad-based prohibition of private speech on matters of immense public concern" that "strikes at the heart" of efforts "to eradicate race and sex stereotyping" against "people of color, women, and LGBTQ individuals."

"The depth and scope of EO 13950's constitutional flaws are alarming and, if left unremedied, will erode the core principles of our democracy and the foundations of our pluralistic society," the suit says.

It's also unenforceably vague, according to the complaint.

In addition to Trump himself, it targets the Labor Department and Labor Secretary Eugene Scalia.

The case landed on the docket of Judge Amit P. Mehta, an Obama appointee who [was assigned last week](#) to oversee the Justice Department's [landmark antitrust lawsuit against Google](#).

Cause of Action: First Amendment; due process and equal protection clauses of the Fifth Amendment.

Relief: An injunction declaring the executive order unlawful and blocking it; costs and fees.

Potential Class Size: "All persons and entities who contract" or "bid to contract" with the federal government—as well as all recipients of, or applicants for, federal grants—that "offer or intend to offer" workplace diversity training sessions meant to "examine and dismantle racism and gender discrimination."

Response: The White House and Labor Department didn't immediately respond to requests for comment Thursday.

Attorneys: The civil rights groups are represented by NAACP Legal Defense and Educational Fund Inc.

The case is Nat'l Urban League v. Trump, D.D.C., No. 20-cv-3121, complaint filed 10/29/20.

(Updated with additional reporting.)

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Article 2 ([back to top](#))

Article Title: Trump Rule Leads Contractors to Cut Diversity, Bias Training

News Source: Bloomberg Law

Reporter's Name: Paige Smith and Jeff Green

Date: October 30, 2020

[Daily Labor Report@](#)



Chris Kleponis/Polaris/Bloomberg

Trump Rule Leads Contractors to Cut Diversity, Bias Training

By Paige Smith and Jeff Green

Oct. 30, 2020, 5:00 AM

President Donald Trump's recent attempt to curb corporate diversity training will linger even if he loses Tuesday's election to former Vice President Joe Biden. Already, federal contractors are unsure of what they can say about race.

More than 300 events, training programs, research projects and other diversity-related activities have been delayed or canceled because of concern about a Sept. 22 executive order aimed at banning federal contractors and agencies from using terms in diversity training that the administration considers divisive and illegal, according to the African American Policy Forum, a social justice think tank. A Labor Department official said last week that the agency's already received more than 100 complaints via a government hotline to report possible violations.

The executive order, which bars the use of concepts such as "White privilege" and "White fragility," runs counter to a rush by corporations to enhance diversity efforts after the police killing of George Floyd in May. Many executives have pledged to tackle structural or implicit racism, which the Trump order also flagged as potentially illegal. The prospect of scrutiny from the government calls such initiatives into question, and casts a shadow that could long outlast the Trump administration.

The U.S. Chamber of Commerce and a group of more than 150 companies have asked that the order be rescinded. The NAACP Legal Defense and Educational Fund also said Thursday that it is representing the National Urban League and the Fair Housing Alliance in a lawsuit over the order. Other suits may follow, said Shirley Wilcher, who was head of the U.S. Department of Labor's Office of Federal Contract Compliance Programs during the Clinton administration. She's now the executive director of the American Association for Access, Equity, and Diversity.

Even if Biden wins, companies will still have to be careful with what kinds of training materials they use, said Laura Mitchell, a principal with the law firm Jackson Lewis. She works with employers dealing with the OFCCP, which is asking federal contractors to turn over training materials and is fielding complaints through the new hotline.

The White House frames the new rule as mirroring existing anti-discrimination statutes, including Executive Order 11246 from 1965.

"It is unacceptable for taxpayer dollars to fund workplace training that promotes racial stereotypes or encourages discrimination based on the color of an employee's skin," White House spokesman Judd Deere said in an email Thursday.

By trying to change the interpretation of established policy, the administration could shape corporate training for years to come, even if Trump's successor rescinds the September executive order.

The complaint hotline probably is here to stay, said Mickey Silberman, an attorney who represents federal contractors in OFCCP matters. Under any administration, an agency charged with fighting discrimination wouldn't want to be seen eliminating a hotline that lets workers submit complaints.

For now, he said, companies have either put diversity training on hold until after the election, revised their training materials to meet the mandate or decided to ignore the order.

Sterling Cruz-Herr, founder of TransClue, a training and consulting company focused on equality for transgender and non-binary people, said the company was among the groups already affected by the rule. TransClue had a training session scheduled Oct. 7 for employees of the U.S. Environmental Protection Agency, but it was postponed because of the order.

"It's not so clear what fits and doesn't fit," Cruz-Herr said. The training would have offered tips on how the resilience of LGBTQ people against discrimination can be a pattern for people navigating the stress of Covid-19 as well as racial protests, they said in an interview.

Schools also might have to adjust, dropping certain references to slavery and racism in history lessons, said Vincent Wong, research associate with the African American Policy Forum. The group used a member mailing list and social media to gather examples of programs and materials being reconsidered. “It’s spread like wildfire,” he said.

Wong sees the executive order as a sign of the conservative reaction against the culture’s growing recognition of systemic racism. He expects the rule to resonate for years.

“It’s not going to go away if Trump loses the election,” Wong said. “All of the infrastructure — that’s going to remain.”

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Article 3 ([back to top](#))

Article Title: Agencies, Contractors Suspend Diversity Training To Avoid Violating Trump Order

News Source: NPR

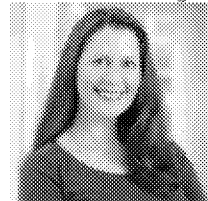
Reporter’s Name: Melissa Block

Date: October 30, 2020

Agencies, Contractors Suspend Diversity Training To Avoid Violating Trump Order

October 30, 2020 5:00 AM ET

Heard on Morning Edition



Melissa Block



President Trump addresses a rally this week at Capital Region International Airport in Lansing, Mich. **Brendan Smialowski/AFP via Getty Images** **hide caption**

toggle caption

Brendan Smialowski/AFP via Getty Images

President Trump addresses a rally this week at Capital Region International Airport in Lansing, Mich.

Brendan Smialowski/AFP via Getty Images

Three civil rights groups filed a federal class-action lawsuit Thursday challenging the Trump administration's recent crackdown on diversity training.

The NAACP Legal Defense and Educational Fund, National Urban League and National Fair Housing Alliance call President Trump's Sept. 22 executive order "chillingly punitive" ensorship that violates guarantees of free speech, equal protection and due process.

A few weeks ago, I BANNED efforts to indoctrinate government employees with divisive and harmful sex and race-based ideologies. Today, I've expanded that ban to people and companies that do business...

— Donald J. Trump (@realDonaldTrump) September 22, 2020

Trump's executive order prohibits certain diversity training that the administration says amounts to "divisive, anti-American propaganda."

In the five weeks since the order was signed, critics say it has had a widespread chilling effect as federal agencies, the military, government contractors and grant recipients scramble to figure out how to comply.

The order targets diversity training grounded in what the administration terms a "malign ideology" that "threatens to infect core institutions of our country."

Such an ideology, the order says, "is rooted in the pernicious and false belief that America is an irredeemably racist and sexist country."

The order applies broadly to federal agencies and the military as well as government contractors and recipients of federal grants, including universities and nonprofits.

Article continues after sponsor message

All three of these trainings from @StateDept, @EPA, and @DeptVetAffairs have been cancelled. Thanks for the help. <https://t.co/5qkSgnGEtO>

— Russ Vought (@RussVought45) September 22, 2020

The departments of State, Justice and Veterans Affairs are among those that have suspended all diversity and inclusion training programs while they review their content. Many companies and universities have done the same.

The executive order also directs the Department of Labor to establish a government hotline encouraging "employees and other concerned members of the public" to ask questions or complain about diversity training they find offensive or potentially unlawful, for possible investigation. The hotline has received more than 140 responses in the five weeks since it was set up.

The plaintiffs who filed the lawsuit this week say that hotline carries with it "alarming ... echoes of McCarthyism."

A White House memorandum warns that contractors found in violation could have their contracts suspended or canceled. Noncompliance by federal employees, the memo says, "will result in consequences, which may include adverse action."

Asked to explain the reasoning behind the order at the Sept. 29 presidential debate, Trump said, "They were teaching people that our country is a horrible place. It's a racist place. And they were teaching people to hate our country. And I'm not going to allow that to happen."

Factbase Videos YouTube

"A really scary place to be"

When Michelle Kim first heard about Trump's executive order, which is titled "Combating Race and Sex Stereotyping," she says, "My first immediate thought was, here we go."

Kim is co-founder and CEO of the company Awaken, based in Oakland, Calif., which provides workshops on diversity, equity and inclusion to businesses.

Her apprehension proved justified. It wasn't long after the order was issued that she heard from a concerned corporate client, asking Kim to review her materials to ensure they did not include any of the prohibited concepts.

Terms the Trump administration has singled out as potentially problematic include "white privilege," "systemic racism," "unconscious bias," "intersectionality," "racial humility" and "critical race theory."

Kim told her client that while she could theoretically avoid use of the term "white privilege" in her talk, if she did so, "I would be agreeing with the spirit of the ask, which is problematic on its own."



Race

Trump Tells Agencies To End Trainings On 'White Privilege' And 'Critical Race Theory'

She offered to nullify her speaking agreement, but in the end, she was able to assuage her client's concerns. Her talk on power and privilege in the workplace went forward.

Still, Kim says, damage has been done: "Instead of us being focused on actually fighting racism and being anti-racist, now we are scrambling to figure out the legal ramifications of it. I think in many ways the executive order has succeeded in creating that distraction."

The Trump administration's order, Kim believes, is founded on a gross misunderstanding of diversity training: the mistaken belief that it's all about blaming and vilifying white people. (The word "scapegoating" appears seven times in the executive order.)

That misconception is not just wrong, Kim says, but it's also dangerous. "Somehow we've gotten to a place where we believe fighting against racism is anti-patriotic," she says. "That's where we are as a society. And that's a really scary place to be."

"It's a dog whistle"

Joelle Emerson, co-founder and CEO of the diversity, equity and inclusion strategy firm Paradigm, admits to being "extremely naive" when she first read the executive order.

"I didn't believe that any of our clients would be fazed by this," Emerson says. "I was like, 'This is clearly propaganda. It's fascist propaganda. It's a dog whistle to Trump's base, and organizations that care about diversity, equity and inclusion are going to be just as offended by this order as we are.' And I was wrong."

As a result of the order, Emerson lost a client, a government contractor that decided to put all of its diversity training on hold.

The president's crackdown on diversity training is part of a broader culture war, Emerson says, a battle that plays on people's fears about what diversity represents. That fear, she says, is that "diversity is not for you. Diversity training is all about making you feel guilty about who you are, depriving you of your rights."

"Of course," she says, "none of that is accurate, but that's a fear that many white people have about diversity efforts. And this seems to be speaking directly to that fear, and trying very hard to tap into that fear, and sow division and discord."



Politics

Trump Expands Ban On Racial Sensitivity Training To Federal Contractors

At the employment law firm Littler Mendelson, Chris Gokturk has been fielding a flood of calls from companies that have government contracts.

"It's been a rough few weeks!" Gokturk says. "There's not enough hours in the day."

Gokturk helps businesses with their affirmative action and diversity programs, and since the order came out, her clients have had a lot of questions.

"The most common thing is, should we stop all of our diversity training? Should we just stop?" she says. "And, at first I said, 'No. You've vetted your training, you always review it and everything else.' "

Gokturk pauses.

"And then the hotline went up."

That email and telephone government hotline encourages people to submit information confidentially on training programs that involve "prohibited race or sex stereotyping or scapegoating."

"This is asking Americans to be surveilling other Americans, and this is — y'know, it's chilling. It's absolutely chilling," Stanford University sociology professor Shelley Correll says.

She studies gender and organizational diversity, and conducts unconscious bias training.

Correll fears the chilling effect could extend beyond what's specified in the executive order and threaten free speech in academia. It's a concern she's heard from fellow faculty across the country.

"There's a lot of worry that this is just step one, and that this is going to lead to restrictions in terms of what we teach in the classroom," Correll says. "It may take universities really pushing back as we go forward."

The executive order specifies that "divisive concepts" can be discussed in an academic setting if they're done "in an objective manner and without endorsement."

The president's action is both "stunningly off-base" and ill-timed, Correll says: "It's an executive order that has come out at a time when interest in diversity training is higher than it's ever been, at a time when for the first time in polling history, the majority of Americans think that racism in our country is a serious problem. So people are paying attention. And at this moment, the executive order comes out. I don't think that's coincidental."

Of course, if Democratic presidential nominee Joe Biden were to take office in January, he could undo the order with the stroke of a pen.

The Biden campaign declined to say whether he would rescind the order but told NPR, "Vice President Biden stands firmly against discrimination of all kinds and his administration will tackle systemic racism and other forms of discrimination across all of our laws, policies, and institutions."

Article 4 ([back to top](#))

Article Title: [The 2020 Election: Previewing the Potential for Shifts in Labor & Employment Law](#)

News Source: National Law Review

Reporter's Name: Rebecca L. Baker, Leslie Selig Byrd, Amy Karff Halevy, James H. Kizziar Jr., and Amber K. Dodds

Date: October 29, 2020

The 2020 Election: Previewing the Potential for Shifts in Labor & Employment Law

Thursday, October 29, 2020

As Election Day approaches, employers nationwide consider the changes that may come with a victory by Senator Joseph Biden in the Presidential race and/or shift in representation in the U.S. Senate. While we cannot be certain of what the future holds—either in the election or the subsequent legal landscape—the Bracewell Labor & Employment team has prepared the following information in an effort to highlight areas of employment law that may transform, in both the near and far term, in the event of such changes in the country's elected officials.

Senator Biden strongly supports unions, stating that “Everything that defines what it means to live a good life and know you can take care of your family . . . is because of workers who organized unions and fought for worker protections.”

Specifically, he supports:

Provisions of the Protecting the Right to Organize Act (PRO Act) – which would institute financial penalties on companies that interfere with union organizing – and supports legislation that would hold company executives personally liable for such interference.

Funding a “dramatic increase” in the number of investigators at the National Labor Relations Board (NLRB).

Shorter timelines for union election campaigns and bans on mandatory employer meetings with employees during union organizing campaign.

Creating a federal right to union organizing and collective bargaining for all public sector employees.

Creating a cabinet-level working group that will “solely focus on promoting union organizing and collective bargaining.”

Extending the right to organize and bargain collectively to independent contractors.

While recent prior Democrat administrations were not able to strengthen organized labor in the way Senator Biden’s platform hopes to achieve, at a minimum, if Senator Biden were to become President, his appointments to the NLRB would return a pro labor union majority to the agency. In that case, the NLRB decisions and rule making would strengthen union organizing and limits on workplace rules.

Workplace Rules

President Donald Trump shifted the limits of employer workplace policies by undoing pro-union rulings the NLRB made under former President Barack Obama. A Biden Presidency would likely swing such rulings back to where they were in the Obama era.

Employees should look for potential changes in the following areas:

Facially neutral workplace rules: The Trump NLRB, in its *Boeing Company* decision, ruled that an employer does not necessarily violate the NLRA by maintaining a facially neutral work rule, policy or handbook provision that could be reasonably construed to interfere with union or other protected concerted activity protected under Section 7. This overruled *Lutheran Heritage Village-Livonia*, which under the Obama administration, was frequently applied to invalidate facially neutral employer rules adopted and applied for legitimate business reasons unrelated to an employee’s Section 7 activity. Examples of Section 7 activity include the right to discuss wages and working conditions and the right to organize.

Workplace investigations: In its 2015 *Banner Health* decision, the NLRB prohibited employers from requiring employees to keep workplace investigations confidential. Last December, the Trump NLRB, in *Apogee Retail*, reversed the *Banner Health* decision, finding that employer policies that require confidentiality during internal investigations are per se lawful.

Employer e-mail: As a result of the NLRB’s 2014 *Purple Communications* decision, employers could not prohibit employees from accessing company email for union-related communications. The Trump NLRB, in its *Caesar’s Entertainment* decision, restored employer rights to prohibit use of its email systems for non-business purposes.

Senator Biden supports the following legislation:

The Equality Act

A proposed law that would codify anti-discrimination protections for LGBTQ individuals in employment as well as other contexts, including housing.

Ensure protection from associational discrimination – discrimination on the basis of a person’s association with an individual in a protected class.

The Equality Act passed the House of Representatives but has not come to a vote in the Senate.

Paycheck Fairness Act

A proposed law that addresses wage discrimination on the basis of sex.

Amends equal pay provisions of the Fair Labor Standards Act to restrict use of the bona fide factor defense to wage discrimination claims, enhance non-retaliation provisions, make it unlawful to require an employee to sign a contract or waiver prohibiting the employee from disclosing information about the employee’s wages and increase civil penalties for violations of equal pay provisions.

Prohibits employers from screening job applicants based on their salary history or requiring salary history during the interview or hiring process.

Requires EEOC to issue regulations for collecting compensation and other employment data from employers according to the sex, race, and ethnic identity of employees for use in enforcing laws prohibiting pay discrimination.

The Paycheck Fairness Act passed the House of Representatives but has not come to a vote in the Senate.

Department of Labor: Independent Contractors, Wage Changes and Federal Contractors

As stated above, Senator Biden supports the PRO Act:

Increasing the standard to classify workers as independent contractors

Expanding the definition of “joint employer”

Criminal liability for employer interference with organizing efforts

DOL, Wage & Hour/FLSA: Recent Rules & Potential Changes

(Existing) Final Rule increasing the salary threshold to \$684/week

If the minimum wage is increased to \$15/hr, then the salary threshold would likely increase to retain a sufficient gap between exempt and non-exempt employees under the FLSA (\$15/hr = \$600/wk)

(Existing) Final Rule expanded Section 7(i) overtime exemption for retail and service industries by withdrawing the dated list of businesses with “no retail concept.”

Likely not affected

(Existing) Final Rule allows bonuses or other incentives to salaried, nonexempt employees without defeating the fluctuating workweek” method described in 29 CFR 778.114.

Likely not affected

(Existing) Final Rule on joint employer describing “vertical” and “horizontal” joint employer scenarios (enjoined by federal district court) to the extent the DOL too narrowly defined joint employment)

This may be challenged.

Proposed rule adopting the “economic realities” test for independent contractors and emphasizing the factors of control and opportunity for profit and loss.

This may be challenged.

Senator Biden’s general proposals:

Increased penalties (in addition to current FLSA remedies and liquidated damages) for worker misclassification.

Senator Biden proposes to increase DOL/FLSA enforcement effort.

Senator Biden proposes to increase staffing of agencies.

Senator Biden proposes greater collaborative enforcement efforts between various labor agencies (NLRB, EEOC, IRS, State unemployment and labor agencies).

Executive Orders & the Office of Federal Contract Compliance Programs (OFCCP)

Executive Order 13950, “Combating Race and Sex Stereotyping” prohibiting federal contractors from instilling race or sex stereotyping or scapegoating in workplace diversity and inclusion training

Likely withdrawn by Senator Biden administration

Notably, the OFCCP under the Trump Administration collected greater enforcement fines than expected - e.g., OFCCP collected more than \$21 Million from Dell Technologies, Goldman Sachs and Bank of America primarily relating to gender/race wage disparity claims.

COVID Response – Economic and Public Health Policies Affecting Employers

From “Unemployment” to “Employment Insurance”:

Focus on maintaining employment at reduced hours, with federal government supplementing worker wages

100% federal financing for short-time compensation plan that is “automatically extended based on economic and health conditions” (without the vote of Congress)

Tax credit for employer’s extra health care costs

COVID:

Create Pandemic Testing Board to “guarantee regular, reliable and free access to testing for all, including every worker called back to the job”

Hire 100,000 Americans to conduct contact tracing

Ensure emergency paid leave for all who contract COVID-19 or need to care for a loved one with COVID-19

“Ensure worker protection and accountability” including tasking OSHA with “setting and enforcing a rigorous emergency temporary standard”

Equip small business with a “restart package” to retain and rehire workers

Schools – Issuing “basic, objective criteria” at the federal level to guide school reopening and passing significant emergency federal funding for school.

Senator Biden has committed to reinstating a variety workplace safety and health regulations altered during the Trump administration, such as regulations requiring companies to report their workplace injuries.

He also has promised to increase the number of investigators in the Occupational Safety and Health Administration (OSHA) and the Mine Safety Health and Administration (MSHA) and to direct OSHA to substantially expand its enforcement efforts.

Employment Agreement Restrictions

Senator Biden has promised to will work with Congress to eliminate all non-compete agreements, except the very few that are absolutely necessary to protect a narrowly defined category of trade secrets, and outright ban all no-poaching agreements.

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Article 5 (back to top)

Article Title: Trump administration sued by civil rights groups over executive order restricting diversity training

News Source: USA Today

Reporter's Name: Jessica Guynn

Date: October 29, 2020

Trump administration sued by civil rights groups over executive order restricting diversity training

Jessica Guynn, USA TODAY Published 3:52 p.m. ET Oct. 29, 2020 | Updated 10:29 p.m. ET Oct. 29, 2020

Companies across the country have been speaking out against racism, but less than 2% of top executives at 50 largest companies are Black. USA TODAY

Civil rights groups filed a lawsuit challenging President Donald Trump's executive order restricting government contractors and federal agencies from offering diversity training that the president says is "divisive" and "un-American."

The complaint filed Thursday by the NAACP Legal Defense Fund, the National Urban League and the National Fair Housing Alliance in federal court in Washington, D.C., argues the executive order violates free speech rights in an "extraordinary and unprecedented act by the Trump administration to undermine efforts to foster diversity and inclusion in the workplace."

The Trump administration is "trying to keep individuals from even expressing their thoughts," Ajmel Quereshi, senior counsel with the NAACP Legal Defense fund, told USA TODAY. "What this case does is challenge this executive order on both First Amendment grounds as well as Equal Protection grounds specifically because it tries to keep any federal contractor, federal employee or federal grantee from speaking about the history of systemic discrimination in the United States and its continuing effects."

The Labor Department said the elimination of "race and sex stereotyping and scapegoating in employment" is "a key civil rights priority of the Trump Administration."

"The Department of Labor is confident it will prevail in this lawsuit and that President Trump's Executive Order will be found lawful," the Labor Department said in a statement to USA TODAY.

Trump executive order's 'chilling effect'

Trump's executive order comes as corporate America steps up efforts to address racial disparities following the death of George Floyd, a Black man, under the knee of white officer in Minneapolis in May.

Critics say the executive order is a broadside against diversity and inclusion programs that will impair efforts by business and government to reverse decades-long patterns of discrimination and exclusion. A USA TODAY investigation found that more than 55 years after the Civil Rights Act, less than 2% of the top executives at the nation's largest companies are Black.

'It's already having a massive effect': Corporate America demands Trump rescind executive order on diversity

Microsoft, Wells Fargo diversity probed: Diversity initiatives to hire more Black leaders investigated by Trump administration

The ripple effects from the executive order have also reached educational institutions, nonprofits and others who have federal contracts or plan to apply for them.

By forcing government agencies or contractors to choose between censoring speech or forfeiting government contracts, "the order strikes at the heart of those critical efforts by government and nongovernment actors – including trainings and other forms of private speech in the workplace – to eradicate race and sex stereotyping and other continuing manifestations of entrenched discrimination and bias against people of color, women, and LGBTQ individuals," the complaint alleges.

Trump administration challenges critical race theory

A White House memo in late September suggested rooting out "ideologies that label entire groups of Americans as inherently racist or evil" in diversity training materials by searching for keywords such as "white privilege," "systemic racism," "intersectionality" and "unconscious bias."

The executive order's stated goal is "to combat offensive and anti-American race and sex stereotyping and scapegoating."

Asked about his executive order during the first presidential debate, Trump said: "They were teaching people that our country is a horrible place, it's a racist place. And they were teaching people to hate our country. And I'm not gonna allow that to happen."

The target of the executive order is critical race theory and stems from appearances by conservative activist Christopher Rufo on Fox News' "Tucker Carlson Tonight."

Critical race theory teaches that racism pervades government and other American institutions, giving white people an advantage.

"What I've discovered is that critical race theory has become, in essence, the default ideology of the federal bureaucracy and is now being weaponized against the American people," Rufo, director of the Discovery Institute's Center on Wealth & Poverty in Seattle said on Carlson's show.



Civil rights groups filed a lawsuit challenging Donald Trump's executive order restricting government contractors and federal agencies from offering diversity training that the president says is "divisive" and "un-American" diversity. (Photo: Patrick Semansky, AP)

Rufo celebrated achieving his goal– "...persuading the President of the United States to abolish critical race theory in the federal government" – posting on Facebook moments after Trump issued the order.

Corporate diversity efforts in line of Trump fire

The Trump administration is not just pushing back against the belief that American society is inherently racist. It's also challenging corporate efforts to rebalance the scales by elevating more Black executives and executives of color into leadership ranks.

In recent weeks, the Office of Federal Contract Compliance Programs, which oversees federal contractors for the Labor Department, has questioned whether diversity initiatives at Microsoft and Wells Fargo to double the ranks of Black managers and executives over the next five years violate federal laws barring discrimination based on race. Both corporations say they believe their initiatives comply with those laws.

Guidance issued by the Office of Federal Contract Compliance Programs outlines strict but vague requirements for complying with Trump's executive order on diversity and inclusion training that seem to cover essential and foundational concepts, Turner said.

The agency has set up a hotline so that any individual or group can file a complaint against a government agency or federal contractor for perceived violations by phone or email. Third parties can also file a complaint on behalf of an individual or a group, the guidance says.

With Appreciation,

Shenita A. Benjamin
Sr. Executive Assistant

Office of Federal Contract Compliance Programs

U.S. Department of Labor

P: b(6)

Benjamin.Shenita.A@dol.gov



Message

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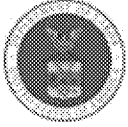
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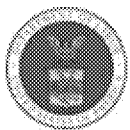
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CC: Davidson, Patricia J - OFCCP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=881aff8bf6fb4a85ae33921a0cb1596b-Davidson, P]
Subject: RE: Recurring Monthly Meeting | Nov 4 - EO 13950 Stakeholder Engagement
Attachments: EO13950_StakeholderEngagement_Summary.docx

Hi Craig,

I am attaching the list of EO 13950 stakeholder engagement for your review.

Thanks,
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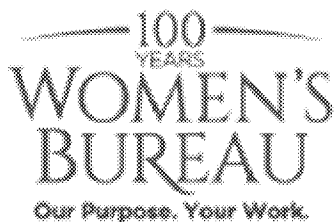
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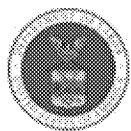
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Executive Order (EO) 13950 – OFCCP Stakeholder Engagement Summary

Past Stakeholder Engagement

September 29, 2020

1. National Industry Liaison Group – MOU Partner
 - Monthly MOU call; discussion included EO 13950

October 1, 2020

2. David Goldstein, Jim Paretti, and Chris Gokturk – Litter Mendelson, P.C.
 - Discussion focused on EO 13950

October 1, 2020

3. The Institute for Workplace Equality – MOU Partner
 - Discussion with the Institute’s co-chairs and strategic advisors focused on EO 13950

October 9, 2020

4. Information Technology Industry Council
 - Discussion focused on EO 13950

October 13, 2020

5. American Association for Access, Equity and Diversity – MOU Partner
 - Discussion focused on EO 13950

October 14, 2020

6. The Institute for Workplace Equality
 - OFCCP update to the Institute’s co-chairs, strategic advisors, and advisory board members on recent developments, including EO 13950 and Letters to Microsoft/Wells Fargo

October 15, 2020

7. House Committee on Education and Labor – Majority Staff
 - Briefing focused on EO 13950
8. Information Technology Industry Council Virtual Discussion with Craig E. Leen
 - Discussion with member companies focused on EO 13950

October 19, 2020

9. American Association for Access, Equity and Diversity Candid Conversations
 - OFCCP update, including EO 13950

October 19, 2020

10. House Committee on Education and Labor – Minority Staff
 - Briefing focused on EO 13950

October 20, 2020

11. Government Executive’s Federal Workplace Summit: Diversity & Inclusion in the Federal Workforce Panel

Executive Order (EO) 13950 – OFCCP Stakeholder Engagement Summary

- OFCCP update, including EO 13950

October 19, 2020

12. Lawyers' Committee for Civil Rights Under Law, The Leadership Conference on Civil and Human Rights, National Women's Law Center, and NAACP Legal Defense and Educational Fund

- Discussion focused on EO 13950

October 21, 2020

13. Public Stakeholder Engagement

- Outreach focused on EO 13950 Request for Information

October 22, 2020

14. The Institute for Workplace Equality and Trade Association Town Hall

- OFCCP update on recent developments, including EO 13950 and Letters to Microsoft/Wells Fargo

October 27, 2020

15. Center for Workplace Compliance – 2020 Compliance Roundtable

- OFCCP update, including EO 13950

16. National Industry Liaison Group

- Monthly MOU call; discussion focused on EO 13950 and Letters to Microsoft/Wells Fargo

Planned Stakeholder Engagement

November 5, 2020

17. National Employment Lawyers Institute's 39th Annual Affirmative Action Briefing

- OFCCP update, including EO 13950

November 13, 2020

18. American Bar Association Contract Public Law Section's Panel

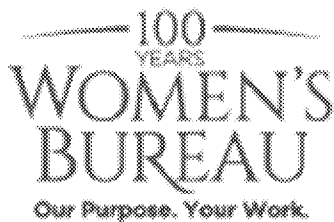
- Panel discussion focused on EO 13950

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Attachments: StakeholderEngagement_Summary_Since09222020.pdf

Hi Andy. Attached are the speaking events I've done and have scheduled. I've also done other stakeholder engagement as well through phone calls, emails, etc., but these are the main past and future speaking events since EO 13950 was issued. Best, Craig

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Cc: Sumbrum, Abbie C - OSEC <Sumbrum.Abbie.C@dol.gov>; Schwarz, Andrew J - OSEC <schwarz.andrew.j@dol.gov>
Subject: RE: Recurring Monthly Meeting | Nov 4

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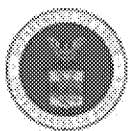
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Desk: 202-[REDACTED] | Cell: [REDACTED]
couch.stephanie.m@dol.gov

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Sent: 11/2/2020 2:46:14 PM
To: Gean, Lissette - OFCCP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bbb9a13178c24aadb6b7613f2f9041f3-Gean, Lisse]
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Subject: RE: Recurring Monthly Meeting | Nov 4 - EO 13950 Stakeholder Engagement
Attachments: EO13950_StakeholderEngagement_Summary.docx

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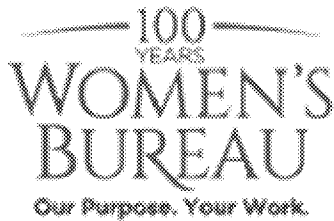
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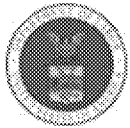
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Sent: 11/2/2020 8:25:12 PM
To: Schwarz, Andrew J - OSEC [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=388b588507aa4b4cb9d8c5c87dc2171d-Schwarz, An]; Kilberg, Andrew G - OSEC [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=285bfb7c58734e858f9cbd77c1bcf3c7-Kilberg, An]; Couch, Stephanie M - OSEC [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d424f9cf8d66450cb5de4c4674f3ef0b-Couch, Step]; Gean, Lissette - OFCCP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bbb9a13178c24aadb6b7613f2f9041f3-Gean, Lisse]
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Subject: Re: Recurring Monthly Meeting | Nov 4

Also, although I'm sure you'd guess, I just want to clarify that all of these speaking events were done virtually. Have a nice evening, Craig

Get Outlook for iOS

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To: Schwarz, Andrew J - OSEC <schwarz.andrew.j@dol.gov>; Kilberg, Andrew G - OSEC <Kilberg.Andrew.G@dol.gov>; Couch, Stephanie M - OSEC <Couch.Stephannie.M@dol.gov>; Gean, Lissette - OFCCP <b(6)@dol.gov>
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Subject: RE: Recurring Monthly Meeting | Nov 4

Hi Andy. Attached are the speaking events I've done and have scheduled. I've also done other stakeholder engagement as well through phone calls, emails, etc., but these are the main past and future speaking events since EO 13950 was issued. Best, Craig

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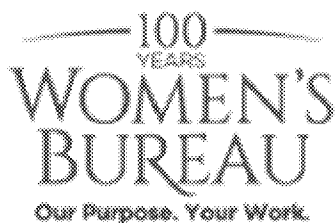
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Cc: Sumbrum, Abbie C - OSEC <Sumbrum.Abbie.C@dol.gov>; Schwarz, Andrew J - OSEC <schwarz.andrew.j@dol.gov>

Subject: RE: Recurring Monthly Meeting | Nov 4

Craig: Your topics make sense to me. It might be helpful to prepare a list of the stakeholder events you've done since EO 13950 was issued; that will give the Secretary and Deputy a feel for how you have been messaging.

Andrew G. I. Kilberg

Counselor to the Secretary

U.S. Department of Labor

202

b(6)

From: Leen, Craig - OFCCP <Leen.Craig@DOL.gov>

Sent: Friday, October 30, 2020 11:03 AM

To: Couch, Stephanie M - OSEC <Couch.Stephanie.M@dol.gov>; Gean, Lissette - OFCCP <b(6)@dol.gov>

Cc: Sumbrum, Abbie C - OSEC <Sumbrum.Abbie.C@dol.gov>; Kilberg, Andrew G - OSEC <Kilberg.Andrew.G@dol.gov>;

Schwarz, Andrew J - OSEC <schwarz.andrew.j@dol.gov>

Subject: RE: Recurring Monthly Meeting | Nov 4

Thanks, I look forward to the meeting. I don't have any materials to present at the moment as we continue to implement prior approved items. I would be interested in discussing AAP/D&I focused reviews in concept (although they are still in development), as well as messaging on EO 13950. I'd be happy to go over the summary of RFI responses or summary of Hotline inquiries as well if he would like. I'm copying Andrew and Andy as well for their thoughts.

From: Couch, Stephanie M - OSEC <Couch.Stephanie.M@dol.gov>

Sent: Friday, October 30, 2020 10:53 AM

To: Gean, Lissette - OFCCP <Gean.Lissette@dol.gov>

Cc: Leen, Craig - OFCCP <Leen.Craig@DOL.gov>; Sumbrum, Abbie C - OSEC <Sumbrum.Abbie.C@dol.gov>

Subject: RE: Recurring Monthly Meeting | Nov 4

Hi All,

My apologies for the back and forth. The meeting has been moved to **Tuesday, Nov 3 from 2-2:30pm**. The updated invitation has been sent out. Please let us know if things need to change. Happy to assist.

Stephanie

From: Gean, Lissette - OFCCP <b(6)@dol.gov>

Sent: Friday, October 30, 2020 9:54 AM

To: Couch, Stephanie M - OSEC <Couch.Stephanie.M@dol.gov>

Cc: Leen, Craig - OFCCP <Leen.Craig@DOL.gov>; Sumbrum, Abbie C - OSEC <Sumbrum.Abbie.C@dol.gov>

Subject: RE: Recurring Monthly Meeting | Nov 4

Good morning Stephanie,

There is no conflict. We'll be looking out for the meeting invitation.

DOL012573

Thank you,
Lisette

From: Couch, Stephanie M - OSEC <Couch.Stephanie.M@dol.gov>

Sent: Friday, October 30, 2020 9:40 AM

To: Leen, Craig - OFCCP <Leen.Craig@DOL.gov>; Gean, Lisette - OFCCP <[\[b\(6\)\]@dol.gov](mailto:[b(6)]@dol.gov)>

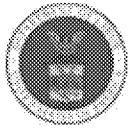
Cc: Sumbrum, Abbie C - OSEC <Sumbrum.Abbie.C@dol.gov>

Subject: Recurring Monthly Meeting | Nov 4

Good morning Everyone,

Just to keep track, October's recurring monthly meeting was pushed a few times, and then ultimately ended up being cancelled altogether. Wanted to send a reminder that November's recurring monthly meeting is currently scheduled for Wednesday, Nov 4 from 2 – 2:30pm. Please let us know if you'd like to keep this meeting or if there is a conflict and you need to reschedule.

Thank you,



Stephanie Couch | Assistant Scheduler
Office of the Secretary | U.S. Department of Labor
Desk: 202-[b(6)] Cell: 202-[b(6)]
couch.stephanie.m@dol.gov

Message

From: Gean, Lissette - OFCCP [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BBB9A13178C24AADB6B7613F2F9041F3-GEAN, LISSE]
Sent: 11/2/2020 4:30:49 PM
To: Leen, Craig - OFCCP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ffd4a5b3cc74f49a5d2bf4c747416d4-Leen, Craig]
CC: Davidson, Patricia J - OFCCP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=881aff8bf6fb4a85ae33921a0cb1596b-Davidson, P]
Subject: RE: Recurring Monthly Meeting | Nov 4 - EO 13950 Stakeholder Engagement
Attachments: StakeholderEngagement_Summary_Since09222020.docx

Hi,

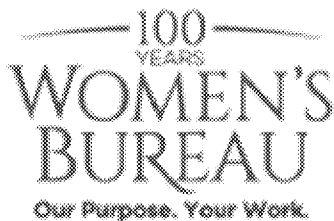
Per our discussion, I'm attaching the revised document.

Thanks,
L

From: Leen, Craig - OFCCP <Leen.Craig@DOL.gov>
Sent: Monday, November 02, 2020 2:46 PM
To: Gean, Lissette - OFCCP <[REDACTED]@dol.gov>
Cc: Davidson, Patricia J - OFCCP <[REDACTED]@dol.gov>
Subject: RE: Recurring Monthly Meeting | Nov 4 - EO 13950 Stakeholder Engagement

Attached includes my edits. Please add my discussion with House minority staff. Also, I believe they want all stakeholder engagements, not all meetings I've had touching on EO 13950. I'll call you to discuss. Thanks.

Craig E. Leen
OFCCP Director



From: Gean, Lissette - OFCCP <[REDACTED]@dol.gov>
Sent: Monday, November 02, 2020 1:29 PM
To: Leen, Craig - OFCCP <Leen.Craig@DOL.gov>
Cc: Davidson, Patricia J - OFCCP <[REDACTED]@dol.gov>
Subject: RE: Recurring Monthly Meeting | Nov 4 - EO 13950 Stakeholder Engagement

Hi Craig,

I am attaching the list of EO 13950 stakeholder engagement for your review.

Thanks,
Lissette

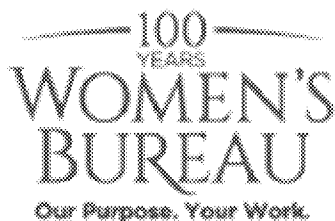
From: Leen, Craig - OFCCP <Leen.Craig@DOL.gov>
Sent: Monday, November 02, 2020 11:58 AM
To: Schwarz, Andrew J - OSEC <schwarz.andrew.j@dol.gov>; Kilberg, Andrew G - OSEC <Kilberg.Andrew.G@dol.gov>; Couch, Stephanie M - OSEC <Couch.Stephanie.M@dol.gov>; Gean, Lissette - OFCCP <b(6)@dol.gov>
Cc: Sumbrum, Abbie C - OSEC <Sumbrum.Abbie.C@dol.gov>
Subject: RE: Recurring Monthly Meeting | Nov 4

I can provide the two most recent EO 13950 reports now (they are attached). They are close hold so should only go to OSEC, DSEC, SOL, and OFCCP, particularly the complaints one.

I'm going to be focused today on the EEOC meeting and the hopeful MOU adoption and rollout. I'd prefer until COB today if possible on the list of speaking events. There have been a number of them and they have gone uniformly well in my view, as we've received very positive feedback. Lissette will start preparing them and I will review this afternoon.

Thanks,
Craig

Craig E. Leen
OFCCP Director



From: Schwarz, Andrew J - OSEC <schwarz.andrew.j@dol.gov>
Sent: Monday, November 02, 2020 11:50 AM
To: Leen, Craig - OFCCP <Leen.Craig@DOL.gov>; Kilberg, Andrew G - OSEC <Kilberg.Andrew.G@dol.gov>; Couch, Stephanie M - OSEC <Couch.Stephanie.M@dol.gov>; Gean, Lissette - OFCCP <b(6)@dol.gov>
Cc: Sumbrum, Abbie C - OSEC <Sumbrum.Abbie.C@dol.gov>
Subject: RE: Recurring Monthly Meeting | Nov 4

Craig,

Can we have that list and any other materials you have decided are necessary for this meeting by 2pm? If not, please call me to discuss a different timeline for these materials. Thank you,

Andy

From: Leen, Craig - OFCCP <Leen.Craig@DOL.gov>
Sent: Friday, October 30, 2020 12:24 PM
To: Kilberg, Andrew G - OSEC <Kilberg.Andrew.G@dol.gov>; Couch, Stephanie M - OSEC <Couch.Stephanie.M@dol.gov>; Gean, Lissette - OFCCP <b(6)@dol.gov>
Cc: Sumbrum, Abbie C - OSEC <Sumbrum.Abbie.C@dol.gov>; Schwarz, Andrew J - OSEC <schwarz.andrew.j@dol.gov>
Subject: RE: Recurring Monthly Meeting | Nov 4

Certainly, happy to do so. Lissette and I will put together a list (there are a lot) and circulate on Monday.

From: Kilberg, Andrew G - OSEC <Kilberg.Andrew.G@dol.gov>
Sent: Friday, October 30, 2020 12:23 PM
To: Leen, Craig - OFCCP <Leen.Craig@DOL.gov>; Couch, Stephanie M - OSEC <Couch.Stephanie.M@dol.gov>; Gean, Lissette - OFCCP <b(6)@dol.gov>
Cc: Sumbrum, Abbie C - OSEC <Sumbrum.Abbie.C@dol.gov>; Schwarz, Andrew J - OSEC <schwarz.andrew.j@dol.gov>
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Andrew G. I. Kilberg
Counselor to the Secretary
U.S. Department of Labor
2021 **b(6)**

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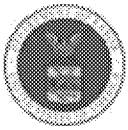
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Thank you,



Stephanie Couch | Assistant Scheduler
Office of the Secretary | U.S. Department of Labor
Desk: 202-**b(6)** | Cell: 202-**b(6)**
couch.stephanie.m@dol.gov

OFCCP Stakeholder Engagement Summary
September 22 – November 15, 2020

Past Stakeholder Engagement

September 22, 2020

1. NENA 2020 Annual Conference
 - OFCCP update focused on Section 503 and diversity and inclusion

September 29, 2020

2. National Industry Liaison Group – MOU Partner
 - Monthly MOU call on numerous OFCCP matters; discussion included EO 13950

October 2, 2020

3. NYU School of Law’s Center for Labor and Employment Law 73rd Annual Conference on Labor
 - OFCCP update on its enforcement activities and compliance assistance initiatives

October 8, 2020

4. American Association for Access, Equity and Diversity’s 46th National Conference – MOU Partner
 - OFCCP update on FY 2020 accomplishments and FY 2021 priorities

October 15, 2020

5. House Committee on Education and Labor – Majority Staff
 - Briefing focused on EO 13950
6. Information Technology Industry Council Virtual Discussion with Craig E. Leen
 - Discussion with member companies focused on EO 13950

October 19, 2020

7. American Association for Access, Equity and Diversity “Candid Conversations” – MOU Partner
 - OFCCP update, including EO 13950
8. VMware National Disability Employment Awareness Month Event
 - OFCCP update focusing on the agency’s Section 503 efforts and diversity and inclusion

October 19, 2020

9. House Committee on Education and Labor – Minority Staff
 - Briefing focused on EO 13950

October 20, 2020

10. Government Executive’s Federal Workplace Summit: “Diversity & Inclusion in the Federal Workforce” Panel
 - OFCCP general remarks on programs and initiatives, including EO 13950

OFCCP Stakeholder Engagement Summary

September 22 – November 15, 2020

October 21, 2020

11. Public Stakeholder Engagement – RFI Stakeholder Call

- Outreach focused on EO 13950 Request for Information

October 22, 2020

12. The Institute for Workplace Equality and Trade Association Town Hall – MOU Partner

- OFCCP update on recent developments, including EO 13950 and recent EO 11246 diversity program inquiries

October 27, 2020

13. Center for Workplace Compliance – 2020 Compliance Roundtable

- OFCCP general remarks on programs and initiatives, including EO 13950

14. National Industry Liaison Group – MOU Partner

- Monthly MOU call on numerous OFCCP matters, including EO 13950 and recent EO 11246 diversity program inquiries

Planned Stakeholder Engagement

November 5, 2020

15. National Employment Lawyers Institute's 39th Annual Affirmative Action Briefing

- OFCCP general remarks on programs and initiatives, including EO 13950

November 13, 2020

16. American Bar Association Contract Public Law Section's Panel

- Panel discussion focused on EO 13950

Additionally, Director Leen has conducted outreach calls focusing on Executive Order 13950 with MOU partners, law firms, trade organizations, and civil rights groups.

Message

From: Gean, Lissette - OFCCP [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BBB9A13178C24AADB6B7613F2F9041F3-GEAN, LISSE]
Sent: 11/4/2020 12:15:18 PM
To: Leen, Craig - OFCCP (Leen.Craig@dol.gov) [Leen.Craig@DOL.gov]
CC: Davidson, Patricia J - OFCCP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=881aff8bf6fb4a85ae33921a0cb1596b-Davidson, P]
Subject: PLEASE READ: [Clearance Agency Notification] CTS #20496: OIG: DOL's OIG Semiannual Report to Congress for the Period of April 1 - September 30, 2020
Attachments: CTS # 20496 Transmittal Memorandums - Vice President Pence and Speaker of the House Pelosi.docx; CTS # 20496 SARC Decision DOL's OIG Semiannual Report to Congress for the Period of April 1 - September 30, 2020 Memo.docx; 20496_OIG Semiannual Report to Congress (April - September 2020) Final_OFCCPComments.docx

Importance: High

Hi Craig,

I apologize, but we are a day late submitting our comments. Please review:

b(5)

- See document titled, "20496_OIG Semiannual Report to Congress (April – September 2020) Final_OFCCPComments."

Thank you,
Lissette

From: [REDACTED] b(6)
Sent: Friday, October 30, 2020 11:55 AM
Subject: [Clearance Agency Notification] CTS #20496: OIG: DOL's OIG Semiannual Report to Congress for the Period of April 1 - September 30, 2020



The following Clearance Assignment has been assigned to **OFCCP** as the assignee. It will be displayed in the **My Work** tab.

Clearance Agency Notification

CTS # 20496: DOL's OIG Semiannual Report to Congress for the Period of April 1 - September 30, 2020

Memo Type: Decision
Originating Agency: OIG
Clearance Assignment Due Date: 11/5/2020
ExecSec Clearance Required: Yes

Comment:

Please review and provide your agency's clearance by the due date.

The Memo will appear on the **Search** tab or you can access it directly through the hyperlink/url below:

[Follow this link](#)

Thank you,
DOL CMP Team

b(6)

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*****This is a system generated message. Please do not reply to this email.*****

SECRETARY OF LABOR
WASHINGTON, D.C. 20210

The Honorable Michael R. Pence
President of the Senate
Washington, D.C. 20510

Dear Mr. President:

Enclosed is the Semiannual Report to Congress from the Office of Inspector General, U.S. Department of Labor, for the period April 1, 2020, through September 30, 2020, in accordance with Section 5 of the Inspector General Act. The report covers significant activities, findings, and recommendations for that period.

I look forward to continued constructive discussions with the Office of Inspector General about the findings and recommendations in this report.

Sincerely,

EUGENE SCALIA

Enclosure

SECRETARY OF LABOR
WASHINGTON, D.C. 20210

The Honorable Nancy Pelosi
Speaker of the House
3-232 United States Capitol
Washington, D.C. 20515

Dear Madam Speaker:

Enclosed is the Semiannual Report to Congress from the Office of Inspector General, U.S. Department of Labor, for the period April 1, 2020, through September 30, 2020, in accordance with Section 5 of the Inspector General Act. The report covers significant activities, findings, and recommendations for that period.

I look forward to continued constructive discussions with the Office of Inspector General about the findings and recommendations in this report.

Sincerely,

EUGENE SCALIA

Enclosure



DECISION

October 30, 2020

MEMORANDUM FOR THE SECRETARY

FROM: LARRY D. TURNER *Larry D. Turner*
Acting Inspector General

SUBJECT: Transmittal of the Office of Inspector General's Semiannual Report to Congress for the period of April 1, 2020, through September 30, 2020

EXECUTIVE SUMMARY

Attached is the U.S. Department of Labor (DOL) Office of Inspector General (OIG) Semiannual Report to Congress. The document highlights the OIG's audit and investigative work for the period of April 1, 2020, through September 30, 2020.

BACKGROUND/DISCUSSION

As required by the Inspector General Act of 1978, as amended, attached is the OIG Semiannual Report to the Congress for the period April 1, 2020, through September 30, 2020. The draft report was previously provided to agencies for their review of the factual accuracy. We have incorporated changes in response to comments, as appropriate.

By law, you have 30 days from the OIG's issuance of the report to review and transmit it to the Congress.

Following the OIG's past practice, I have prepared letters for your possible use to transmit the printed report to the President of the Senate and the Speaker of the House.

My staff and I would be pleased to brief you on the contents of this report if you so desire.

OTHER DOL AGENCIES INVOLVED

Bureau of International Labor Affairs
Employment and Training Administration
Employee Benefits Security Administration
Mine Safety and Health Administration
Office of the Assistant Secretary for Administration and Management

Office of Chief Financial Officer
Office of Chief Information Officer
Office of Federal Contract Compliance Programs
Office of Labor-Management Standards
Office of Workers' Compensation Programs
Occupational Safety and Health Administration
Wage and Hour Division

OTHER FEDERAL AGENCIES INVOLVED

N/A

CONGRESSIONAL INTEREST

The IG Act requires the report to be sent to Congress every six months. Congress may act in light of the report's content.

DUE DATE FOR APPROVAL

Friday, November 27, 2020.

CONTACT

Luiz Santos
Assistant Inspector General for Congressional and Public Relations
Phone: 202-693-7062
Email: santos.luiz@oig.dol.gov

ATTACHMENTS

- *DOL-OIG Semiannual Report to Congress for the period of April 1, 2020, through September 30, 2020*
- *Transmittal letters to President of the Senate and the Speaker of the House*

DECISION

SUBJECT: Transmittal of the Office of Inspector General's Semiannual Report to Congress for the period of April 1, 2020, through September 30, 2020.

RECOMMENDED COURSE OF ACTION: I recommend you approve the transmittal of the Office of Inspector General's Semiannual Report to Congress and sign the transmittal letters.

Approved: _____

Date: _____

Let's Discuss: _____

Date: _____

COMMENTS:

Message

From: Gean, Lissette - OFCCP [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BBB9A13178C24AADB6B7613F2F9041F3-GEAN, LISSE]
Sent: 11/5/2020 4:30:35 PM
To: Santos, Luiz - OIG [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=21b5a05c00914a8581d3430b5bcd3029-Santos, Lui]; Gates, Dwight - OIG [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=40624f645ac14bdbaecbf2ef3725d287-Gates, Dwig]
CC: Sanford, Lynda - OIG [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9ac9e409de7d407b8ac54a14023bdcdd-Sanford, Ly]; Davidson, Patricia J - OFCCP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=881aff8bf6fb4a85ae33921a0cb1596b-Davidson, P]; Smith, Kelley - OFCCP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0cea2c4e5e114c0daafc5aabb237c96a-Smith, Kell]; Tretheway, Andrea - OFCCP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4bcd1bd011a4f19a909b742d2b454dc-Tretheway,]
Subject: RE: [Clearance Agency Notification] CTS #20496: OIG: DOL's OIG Semiannual Report to Congress for the Period of April 1 - September 30, 2020 - OFCCP Comments
Attachments: 20496_OIG Semiannual Report to Congress (April - September 2020) Final_OFCCPComments.docx

Hi Luiz and Dwight,

This is to notify you that we are submitting the following comments to the OIG's Semiannual Report via CTS:

b(5)

For reference, I am attaching the word (tracked changes) version.

If you have any questions, please call.

Thank you,

Lisette

Lisette Geán

Chief of Staff

Office of Federal Contract Compliance Programs

b(6) dol.gov

202

b(6)



From: b(6) >

Sent: Friday, October 30, 2020 11:55 AM

Subject: [Clearance Agency Notification] CTS #20496: OIG: DOL's OIG Semiannual Report to Congress for the Period of April 1 - September 30, 2020



The following Clearance Assignment has been assigned to **OFCCP** as the assignee. It will be displayed in the **My Work** tab.

Clearance Agency Notification

CTS # 20496: DOL's OIG Semiannual Report to Congress for the Period of April 1 - September 30, 2020

Memo Type: Decision

Originating Agency: OIG

Clearance Assignment Due Date: 11/5/2020

ExecSec Clearance Required: Yes

Comment:

Please review and provide your agency's clearance by the due date.

The Memo will appear on the **Search** tab or you can access it directly through the hyperlink/url below:

Follow this link

Thank you,
DOL CMP Team

b(6)

This is a system generated message. Please do not reply to this email.

DOL012680

Message

From: Gean, Lissette - OFCCP [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BBB9A13178C24AADB6B7613F2F9041F3-GEAN, LISSE]
Sent: 10/30/2020 12:51:40 PM
To: Davidson, Patricia J - OFCCP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=881aff8bf6fb4a85ae33921a0cb1596b-Davidson, P]; Williams, Tina T - OFCCP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=de1ca1bb58004746a50104bd40a50623-Williams, T]
CC: Smith, Kelley - OFCCP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0cea2c4e5e114c0daafc5aabb237c96a-Smith, Kell]; Tretheway, Andrea - OFCCP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4bcd1bd011a4f19a909b742d2b454dc-Tretheway,]
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Importance: High

Hi Patty and Tina,

b(5)

See document titled, "OIG Semiannual Report to Congress (April – September 2020) Final_OFCCPComments." I need your concurrence by COB Monday, November 2, 2020.

Thank you,
Lissette

From: Tretheway, Andrea - OFCCP <Tretheway.Andrea.L@dol.gov>
Sent: Friday, October 30, 2020 12:29 PM
To: Gean, Lissette - OFCCP; **b(6)** <[REDACTED]@dol.gov>
Subject: FW: [Clearance Agency Notification] CTS #20496: OIG: DOL's OIG Semiannual Report to Congress for the Period of April 1 - September 30, 2020
Importance: High

Good afternoon Lissette

Should I send this to Craig, Bob, Patty, Keir, Bev and _____ for review and provide input before November 4th?

Anne

From: **b(6)**
Sent: Friday, October 30, 2020 11:55 AM
Subject: [Clearance Agency Notification] CTS #20496: OIG: DOL's OIG Semiannual Report to Congress for the Period of April 1 - September 30, 2020

DOL012773



The following Clearance Assignment has been assigned to **OFCCP** as the assignee. It will be displayed in the **My Work** tab.

Clearance Agency Notification

CTS # 20496: DOL's OIG Semiannual Report to Congress for the Period of April 1 - September 30, 2020
Memo Type: Decision
Originating Agency: OIG
Clearance Assignment Due Date: 11/5/2020
ExecSec Clearance Required: Yes

Comment:

Please review and provide your agency's clearance by the due date.

The Memo will appear on the **Search** tab or you can access it directly through the hyperlink/url below:

[Follow this link](#)

Thank you,
DOL CMP Team

b(6)

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