
From: Mondl, Rachel E - OSEC [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=7D7773F42E1545E886E760B3CB4B19FB-MONDL, RACH]
Sent: 9/22/2020 9:40:42 AM
To: Gene Scalia [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=dcd9f281dc6a423cbd34ff001b8b92c6-Eugene Scal]; P Pizzella [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=af79d04f171d4c2fa1d0fbadc403dedb-Patrick Piz]; Leen, Craig - OFCCP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ffd4a5b3cc74f49a5d2bf4c747416d4-Leen, Craig]; OScannlain, Kate S - SOL [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fc246996e74e4c8d8c6e5c73700c3406-OScannlain,]; Kilberg, Andrew G - OSEC [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=285bfb7c58734e858f9cbd77c1bcf3c7-Kilberg, An]
Subject: Predecisional; update on draft EO
Attachments: 2020stereotyping.eo.docx

I spoke to Douglas Sellers in Staff Sec, and he said the plan is to sign the EO this afternoon. The near-final is attached. I copied Section 4 below.

(b) 5

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Rachel E. Mondl
Chief of Staff
Office of the Secretary
U.S. Department of Labor
(202) **b(6)**

From: Leen, Craig - OFCCP [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5FFD4A5B3CC74F49A5D2BF4C747416D4-LEEN, CRAIG]
Sent: 9/22/2020 9:54:38 AM
To: Mondl, Rachel E - OSEC [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7d7773f42e1545e886e760b3cb4b19fb-Mondl, Rach]; Gene Scalia [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=dcd9f281dc6a423cbd34ff001b8b92c6-Eugene Scal]; P Pizzella [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=af79d04f171d4c2fa1d0fbadc403dedb-Patrick Piz]; OScannlain, Kate S - SOL [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fc246996e74e4c8d8c6e5c73700c3406-OScannlain,]; Kilberg, Andrew G - OSEC [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=285bfb7c58734e858f9cbd77c1bcf3c7-Kilberg, An]
Subject: Re: Predecisional; update on draft EO

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From: Leen, Craig - OFCCP <Leen.Craig@DOL.gov>
Sent: Tuesday, September 22, 2020 9:51:09 AM
To: Mondl, Rachel E - OSEC <Mondl.Rachel.E@dol.gov>; Gene Scalia <scalia.direct@dol.gov>; P Pizzella <pizzella.direct@dol.gov>; OScannlain, Kate S - SOL <OScannlain.Kate.S@dol.gov>; Kilberg, Andrew G - OSEC <Kilberg.Andrew.G@dol.gov>
Subject: Re: Predecisional; update on draft EO

Thanks Rachel.

(b) 5

(b) 5

(b) 5

Thanks.

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From: Mondl, Rachel E - OSEC <Mondl.Rachel.E@dol.gov>
Sent: Tuesday, September 22, 2020 9:40:42 AM
To: Gene Scalia <scalia.direct@dol.gov>; P Pizzella <pizzella.direct@dol.gov>; Leen, Craig - OFCCP <Leen.Craig@DOL.gov>; OScannlain, Kate S - SOL <OScannlain.Kate.S@dol.gov>; Kilberg, Andrew G - OSEC <Kilberg.Andrew.G@dol.gov>
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Rachel E. Mondl
Chief of Staff
Office of the Secretary
U.S. Department of Labor
(202) **b(6)**

From: Leen, Craig - OFCCP [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5FFD4A5B3CC74F49A5D2BF4C747416D4-LEEN, CRAIG]
Sent: 9/22/2020 9:59:07 AM
To: Mondl, Rachel E - OSEC [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7d7773f42e1545e886e760b3cb4b19fb-Mondl, Rach]; Gene Scalia [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=dcd9f281dc6a423cbd34ff001b8b92c6-Eugene Scal]; P Pizzella [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=af79d04f171d4c2fa1d0fbadc403dedb-Patrick Piz]; OScannlain, Kate S - SOL [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fc246996e74e4c8d8c6e5c73700c3406-OScannlain,]; Kilberg, Andrew G - OSEC [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=285bfb7c58734e858f9cbd77c1bcf3c7-Kilberg, An]
Subject: Re: Predecisional; update on draft EO

This language is relevant and helpful in the General Provisions as well:

(b) 5

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From: Leen, Craig - OFCCP <Leen.Craig@DOL.gov>
Sent: Tuesday, September 22, 2020 9:51:09 AM
To: Mondl, Rachel E - OSEC <Mondl.Rachel.E@dol.gov>; Gene Scalia <scalia.direct@dol.gov>; P Pizzella <pizzella.direct@dol.gov>; OScannlain, Kate S - SOL <OScannlain.Kate.S@dol.gov>; Kilberg, Andrew G - OSEC <Kilberg.Andrew.G@dol.gov>
Subject: Re: Predecisional; update on draft EO

Thanks Rachel.

(b) 5

(b) 5

(b) 5

Thanks.

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From: Mondl, Rachel E - OSEC <Mondl.Rachel.E@dol.gov>
Sent: Tuesday, September 22, 2020 9:40:42 AM
To: Gene Scalia <scalia.direct@dol.gov>; P Pizzella <pizzella.direct@dol.gov>; Leen, Craig - OFCCP <Leen.Craig@DOL.gov>; OScannlain, Kate S - SOL <OScannlain.Kate.S@dol.gov>; Kilberg, Andrew G - OSEC <Kilberg.Andrew.G@dol.gov>
Subject: Predecisional; update on draft EO

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Rachel E. Mondl
Chief of Staff
Office of the Secretary
U.S. Department of Labor
(202) **b(6)**

From: Leen, Craig - OFCCP [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5FFD4A5B3CC74F49A5D2BF4C747416D4-LEEN, CRAIG]
Sent: 9/22/2020 10:08:27 AM
To: Kilberg, Andrew G - OSEC [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=285bfb7c58734e858f9cbd77c1bcf3c7-Kilberg, An]; Mondl, Rachel E - OSEC [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7d7773f42e1545e886e760b3cb4b19fb-Mondl, Rach]; P Pizzella [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=af79d04f171d4c2fa1d0fbadc403dedb-Patrick Piz]; OScannlain, Kate S - SOL [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fc246996e74e4c8d8c6e5c73700c3406-OScannlain,]
Subject: Re: Predecisional; update on draft EO

(b) 5

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From: Kilberg, Andrew G - OSEC <Kilberg.Andrew.G@dol.gov>
Sent: Tuesday, September 22, 2020 10:00 AM
To: Leen, Craig - OFCCP; Mondl, Rachel E - OSEC; P Pizzella; OScannlain, Kate S - SOL
Subject: RE: Predecisional; update on draft EO

Taking S1 off.

(b) 5

(b) 5

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: Tuesday, September 22, 2020 9:51 AM
To: Mondl, Rachel E - OSEC <Mondl.Rachel.E@dol.gov>; Gene Scalia <scalia.direct@dol.gov>; P Pizzella <pizzella.direct@dol.gov>; OScannlain, Kate S - SOL <OScannlain.Kate.S@dol.gov>; Kilberg, Andrew G - OSEC <Kilberg.Andrew.G@dol.gov>
Subject: Re: Predecisional; update on draft EO

DOL006654

Thanks Rachel.

(b) 5

(b) 5

(b) 5

Thanks.

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From: Mondl, Rachel E - OSEC <Mondl.Rachel.E@dol.gov>

Sent: Tuesday, September 22, 2020 9:40:42 AM

To: Gene Scalia <scalia.direct@dol.gov>; P Pizzella <pizzella.direct@dol.gov>; Leen, Craig - OFCCP <Leen.Craig@DOL.gov>; OScannlain, Kate S - SOL <OScannlain.Kate.S@dol.gov>; Kilberg, Andrew G - OSEC <Kilberg.Andrew.G@dol.gov>

Subject: Predecisional; update on draft EO

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Rachel E. Mondl
Chief of Staff
Office of the Secretary
U.S. Department of Labor
(202) **b(6)**

From: Leen, Craig - OFCCP [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5FFD4A5B3CC74F49A5D2BF4C747416D4-LEEN, CRAIG]
Sent: 9/22/2020 10:11:47 AM
To: Mondl, Rachel E - OSEC [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7d7773f42e1545e886e760b3cb4b19fb-Mondl, Rach]; OScannlain, Kate S - SOL [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fc246996e74e4c8d8c6e5c73700c3406-OScannlain,]; Kilberg, Andrew G - OSEC [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=285bfb7c58734e858f9cbd77c1bcf3c7-Kilberg, An]; P Pizzella [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=af79d04f171d4c2fa1d0fbadc403dedb-Patrick Piz]
Subject: Re: Predecisional; update on draft EO

I understand that, and we'll do our best to enforce the order of course!

(b) 5

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Thanks.

Get Outlook for iOS

From: Mondl, Rachel E - OSEC <Mondl.Rachel.E@dol.gov>
Sent: Tuesday, September 22, 2020 10:05:33 AM
To: OScannlain, Kate S - SOL <OScannlain.Kate.S@dol.gov>; Kilberg, Andrew G - OSEC <Kilberg.Andrew.G@dol.gov>; Leen, Craig - OFCCP <Leen.Craig@DOL.gov>; P Pizzella <pizzella.direct@dol.gov>
Subject: RE: Predecisional; update on draft EO

Our views were not invited, correct.

Rachel E. Mondl
Chief of Staff
Office of the Secretary
U.S. Department of Labor
(202) (b)(6)

From: OScannlain, Kate S - SOL <OScannlain.Kate.S@dol.gov>
Sent: Tuesday, September 22, 2020 10:04 AM
To: Kilberg, Andrew G - OSEC <Kilberg.Andrew.G@dol.gov>; Leen, Craig - OFCCP <Leen.Craig@DOL.gov>; Mondl, Rachel E - OSEC <Mondl.Rachel.E@dol.gov>; P Pizzella <pizzella.direct@dol.gov>
Subject: RE: Predecisional; update on draft EO

And correct me if I am wrong, Rachel, but we do not get to weigh in again.

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: Kilberg, Andrew G - OSEC <Kilberg.Andrew.G@dol.gov>
Sent: Tuesday, September 22, 2020 10:01 AM
To: Leen, Craig - OFCCP <Leen.Craig@DOL.gov>; Mondl, Rachel E - OSEC <Mondl.Rachel.E@dol.gov>; P Pizzella <pizzella.direct@dol.gov>; OScannlain, Kate S - SOL <OScannlain.Kate.S@dol.gov>
Subject: RE: Predecisional; update on draft EO

DOL006659

Taking S1 off.

(b) 5

(b) 5

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: Tuesday, September 22, 2020 9:51 AM

To: Mondl, Rachel E - OSEC <Mondl.Rachel.E@dol.gov>; Gene Scalia <scalia.direct@dol.gov>; P Pizzella <pizzella.direct@dol.gov>; OScannlain, Kate S - SOL <OScannlain.Kate.S@dol.gov>; Kilberg, Andrew G - OSEC <Kilberg.Andrew.G@dol.gov>

Subject: Re: Predecisional; update on draft EO

Thanks Rachel,

(b) 5

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Thanks.

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From: Mondl, Rachel E - OSEC <Mondl.Rachel.E@dol.gov>

Sent: Tuesday, September 22, 2020 9:40:42 AM

To: Gene Scalia <scalia.direct@dol.gov>; P Pizzella <pizzella.direct@dol.gov>; Leen, Craig - OFCCP <Leen.Craig@DOL.gov>; OScannlain, Kate S - SOL <OScannlain.Kate.S@dol.gov>; Kilberg, Andrew G - OSEC <Kilberg.Andrew.G@dol.gov>

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Rachel E. Mondl
Chief of Staff
Office of the Secretary
U.S. Department of Labor
(202) **b(6)**

From: (b) 6 - OFCCP CTR [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BF4E9A794565427D8FB7320B1CCDFF67-(b) 6]
Sent: 10/19/2020 9:09:55 AM
To: Leen, Craig - OFCCP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ffd4a5b3cc74f49a5d2bf4c747416d4-Leen, Craig]
CC: Gean, Lissette - OFCCP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bbb9a13178c24aadb6b7613f2f9041f3-Gean, Lisse]; Tretheway, Andrea - OFCCP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4bcdc1bd011a4f19a909b742d2b454dc-Tretheway,]; Benjamin, Shenita A - OFCCP CTR [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9cb2432a12734a9bbdb85537fd322dfd-Benjamin, S]
Subject: Director, Leen Daily Briefing Book: October 19, 2020
Attachments: Daily Briefing Book_Director Leen_10.19.2020.pdf

Good morning Craig,

Attached is your Daily Briefing Book for Monday, October 19, 2020. Please let us know if you have questions.

Respectfully,

(b) 6

Sr. Executive Assistant
Office of Federal Contract Compliance Programs
U.S. Department of Labor
Office: (202) 693-(b) 6
(b) 6 @dol.gov



Craig E. Leen Director

Daily Briefing Schedule

October 19, 2020



9:15-9:30
OSEC Huddle Invite Meeting

**OSEC Conference Room S-2508 | Dial-In No. (202)
693 b(6); Passcode: 5556938035**

Agency Heads are reminded to send Huddle agenda items to Exec Sec's Huddle inbox at **b(6)** @dol.gov by 8:30 a.m. Please remember to cc: Callie Robinson and Dorene Evans on your submissions for the agenda, which should be topics only and limit the use of acronyms. Thank you for your timely submissions.

OSEC Conference Room S-2508

Dial-in Number: 202- **b(6)**

Passcode: 5556938035

10:30-11:00
PDN Rollout Call

Conference Call | Dial-In No. (866 [b(6)])
Participant Code: 32676741

Call In: 866 [b(6)]

Leader Code: 52225058 (Catherine)

Participant Code: 32676741

10:30-11:00
Touch Base Meeting with Kelley Smith

Microsoft Teams – Meeting Link Below

[Join Microsoft Teams Meeting](#)

[Learn more about Teams](#) | [Meeting options](#)

11:30-12:30
**Exemption and Waiver for Contracts for Coronavirus
Relief Efforts**

Microsoft Teams – Meeting Link Below

Hi All,

This meeting is to discuss EvergreenHealth's request for Exemption and Waiver for the ACTIV-2 clinical trial with you.

Thanks!
Rosemary

[Join Microsoft Teams Meeting](#)

[Learn more about Teams](#) | [Meeting options](#)

12:00-12:15
Check-In Meeting with OFCCP Director Leen

Microsoft Teams – Meeting Link Below

[Join Microsoft Teams Meeting](#)

[Learn more about Teams](#) | [Meeting options](#)

1:45-2:00

Sign Into VMware NDEAM Event (Mic check, etc.)

Zoom – Meeting Link Below

Topic: National Disability Employment Awareness Month with Craig Leen

Please click the link below to join the webinar:

<https://VMware.zoom.us/j/96278735248?pwd=cWlaYVlqUWtuTjRBYnhzMEFBSWdCZz09>

Passcode: 771279

2:00-3:00

**FW: National Disability Employment Awareness
Month with Craig Leen US Dept of Labor.**

Zoom – Meeting Link Below

-----Original Appointment-----

From: Disability@VMware <disability@vmware.com>

Sent: Wednesday, October 7, 2020 11:57 AM

To: Disability@VMware; BlackVMW_Members_Allies; BlackVMW_Members; podleads;
Women@vmware.com; Latinos@VMware; Veterans@VMware; Latinos POD Global Members; Latinos-
POD-ATL; ATX_VMLatinos; Latinos POD Palo Alto; Adam Brown; Eric Beach; DisabilityPODDL

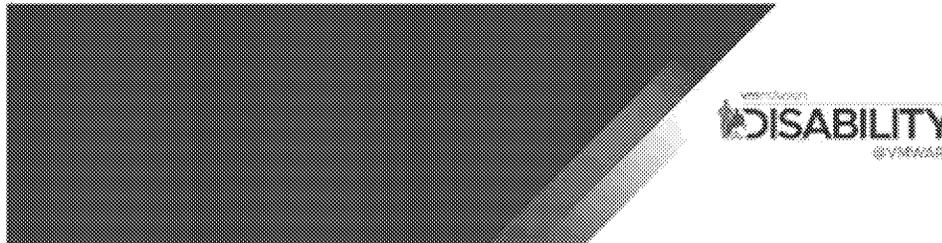
Subject: National Disability Employment Awareness Month with Craig Leen US Dept of Labor.

When: Monday, October 19, 2020 2:00 PM-3:00 PM (UTC-05:00) Eastern Time (US & Canada).

Where: <https://VMware.zoom.us/j/96278735248?pwd=cWlaYVlqUWtuTjRBYnhzMFEFBSWdCZz09>

Passcode: 771279

vmware®



In honor of National Disability Employment Awareness Month, VMinclusion and the Disability@VMware Power of Difference (POD) community invite you to a special speaker series with Craig Leen, Director of the Office of Federal Contract Compliance Programs (OFCCP) at the U.S. Department of Labor.



National Disability Employment Awareness Month THEME:

‘Increasing access and opportunity’

Please Join this session to hear Craig speak about diversity and inclusion and Section 503 - Rehabilitation Act of 1973. This law prohibits federal contractors and subcontractors from discriminating in employment against individuals with disabilities and requires employers take affirmative action to recruit, hire, promote, and retain these individuals.

When: Oct 19, 2020 02:00 PM Eastern Time (US and Canada)

Topic: National Disability Employment Awareness Month with Craig Leen

Please click the link below to join the webinar:

<https://VMware.zoom.us/j/96278735248?pwd=cWlaYVlqUWtuTjRBYnhzMEFBSWdCZz09>

Passcode: 771279

Bio-

Craig E. Leen serves as the Director of the Office of Federal Contract Compliance Programs (OFCCP) at the U.S. Department of Labor, after previously serving as Deputy Director and Senior Advisor. He leads a staff of professionals around the country who are dedicated to protecting workers, promoting diversity, and enforcing the law.

OFCCP administers and enforces three equal employment opportunity laws: Executive Order 11246, as amended; Section 503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 793; and the Vietnam Era Veterans’ Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212. Collectively, these laws make it illegal for contractors and subcontractors doing business with the federal government to discriminate in employment because of race, color, religion, sex, sexual orientation, gender identity, national origin, disability or status as a protected veteran. In addition, contractors and subcontractors are prohibited from discriminating against applicants or employees because they inquire about, discuss, or disclose their compensation or that of others, subject to certain limitations.

Prior to serving at OFCCP, Mr. Leen was the City Attorney of Coral Gables, Florida, where he was the general counsel and chief legal officer. In that role, he practiced in the areas of constitutional law

and civil rights, labor and employment, land use and zoning, ethics, procurement, real estate, construction, code enforcement, and appellate law, including his work on a comprehensive inclusion program for individuals with disabilities in all aspects of government services and employment. Before serving as City Attorney, Mr. Leen was the Chief of the Appeals Section and then the Chief of the Federal Litigation Section at the Miami- Dade County Attorney's Office. In these roles, Mr. Leen litigated and provided counsel in numerous legal areas, including on many civil rights matters. Mr. Leen has also worked at several international law firms, and served as a law clerk to the Honorable Robert E. Keeton, United States District Judge, District of Massachusetts. Mr. Leen is also admitted to practice law in Florida, Massachusetts, New York, and the District of Columbia, and is board certified (inactive) by the Florida Bar in City, County & Local Government law.

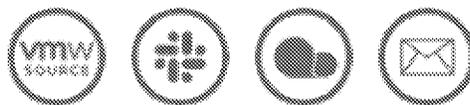
Mr. Leen has taught courses in various legal subjects on the adjunct faculties at The George Washington University Law School, Florida International University College of Law, and the University of Miami School of Law. He has served as Vice Chair of the Florida Rules of Judicial Administration Committee and as Vice Chair of the Florida Appellate Court Rules Committee.

Mr. Leen also has served on the Special Education Advisory Board for DC Public Schools and on the constituency board for the University of Miami-Nova Southeastern University Center for Autism and Related Disabilities.

Mr. Leen received his Juris Doctorate from Columbia Law School, graduating as a Harlan Fiske Stone Scholar, and having served as a teaching fellow in both Contracts and Torts. Mr. Leen received his Bachelor of Arts, cum laude, from Georgetown University, where he majored in both Government and Economics.

JOIN US AND ENGAGE IN THE CONVERSATION

Disability@VMware strives to create a welcoming and inclusive workplace for VMware employees of all abilities. Join us and engage in conversation across any of these channels and resources below.



4:00-4:30

**Briefing_OFCCP-House EdLabor Committee
Minority Staff Regarding EO 13950**

**Conference Call | Dial-In No. (202) b(6) ;
Enter 5552001601#**

Call-in information:

Dial (202) b(6)
Enter 5552001601#

4:30-5:00
Daily Telework Debrief Meeting

Microsoft Teams – Meeting Link Below

[Join Microsoft Teams Meeting](#)

[Learn more about Teams](#) | [Meeting options](#)

From: LaJeunesse, Robert - OFCCP </O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS /CN=C9F3FFA568704A2DB7B79E20A25C080E-LAJEUNESSE,>
To: Suhr, Jane - OFCCP
CC: Leen, Craig - OFCCP; Davidson, Patricia J - OFCCP
Sent: 10/19/2020 11:35:52 AM
Subject: FW: AIC Conciliation Agreement - revised as of 9-24-19
Attachments: Air Industries_R00195364_Draft CA_9-24-2019 CD revised.docx

Dear Jane,

This looks great. I read the prospective relief sections with an eye toward EO 13950, and everything looks good to me.

Please share with AI. Good luck, Bob.

From: Suhr, Jane - OFCCP <[REDACTED]@dol.gov>
Sent: Monday, October 19, 2020 11:07 AM
To: LaJeunesse, Robert - OFCCP <[REDACTED]@dol.gov>
Subject: AIC Conciliation Agreement - revised as of 9-24-19

Hi Bob, I spoke with Air counsel last Friday and they want to see a draft CA. Can you please take a quick look at this version and let me know if it looks okay to share as a draft? Thanks.

Jane

From: Benjamin, Shenita A - OFCCP CTR </O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=9CB2432A12734A9BBDB85537FD322DFD-BENJAMIN, S>
To: Leen, Craig - OFCCP; Gaglione, Robert J - OFCCP; Davidson, Patricia J - OFCCP
CC: LaJeunesse, Robert - OFCCP; Collins, Aida Y - OFCCP; Corbin, Jonide - OFCCP; Harewood, Fiona A - OFCCP; Hodge, Michele - OFCCP; Navarro, Carmen - OFCCP; Rodriguez, Luis N - OFCCP; Sen Diana S - OFCCP; Suhr, Jane - OFCCP; Smith, Kelley - OFCCP; Gaglione, Robert J - OFCCP; Gean, Lissette - OFCCP; Kaiser, Javaid - OFCCP; Kraak, Margaret - OFCCP; Spalding, Candice - OFCCP; Williams, Tina T - OFCCP; Leung, Kenneth - OFCCP; Seely, Christopher - OFCCP; Parker, Walter - OFCCP; Tretheway, Andrea - OFCCP; Speer, Melissa - OFCCP; Stergio, Marcus - OFCCP; Mimnaugh Matthew F - OFCCP; Rosser, Shamika M - OFCCP CTR
Sent: 10/20/2020 11:19:45 AM
Subject: Tuesday Morning Press Releases/Daily News Clippings: October 20, 2020

Tuesday Morning Press Releases: October 20, 2020

Date of Press Release	Company Name	Hyperlink to Release
October 19, 2020	Office of Federal Contract Compliance	<u>U.S. Department of Labor Announces Best Year for Compliance Assistance By Office of Federal Contract Compliance Programs</u>
October 19, 2020	Office of Federal Contract Compliance	<u>University of Connecticut to Pay \$249,539 to Female Employees to Settle Pay Discrimination Allegations in U.S. Department of Labor Investigation</u>
October 19, 2020	Office of Federal Contract Compliance	<u>U.S. Department of Labor and Federal Beverage Contractor Reach Settlement To Resolve Alleged Hiring Discrimination at Houston, Texas, Facility</u>

Tuesday Morning News Clips: October 20, 2020

Article #	Paper	Title
1	Bloomberg Law	<u>OFCCP Loss in Oracle Pay Case Threatens Future Civil Rights Enforcement</u>
2	JDSUPRA	<u>DOL Set to Enforce President Trump's Executive Order 13950 on Combatting Race and Sex Stereotyping</u>
3	Washington Technology	<u>Anti-bias hotline adds to growing confusion surrounding Trump executive order</u>
4	JDSUPRA	<u>OFCCP Week In Review: October 2020 #3</u>
5	Bloomberg Law	<u>Shipbuilder to Pay \$3.5 Million to Settle Hiring Bias Claims (1)</u>

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

Article Title: OFCCP Loss in Oracle Pay Case Threatens Future Civil Rights Enforcement

News Source: Bloomberg Law

Reporter's Name: Maya Raghu

Date: October 20, 2020

The United States Law Week



The Oracle logo is displayed at Oracle headquarters on March 20, 2012 in Redwood Shores, Calif.

Photographer: Justin Sullivan/Getty Images

OFCCP Loss in Oracle Pay Case Threatens Future Civil Rights Enforcement

By Maya Raghu

Oct. 20, 2020, 4:00 AM

[Listen](#)

The recent administrative decision finding Oracle did not engage in pay discrimination based on race or gender may make workers less willing to risk retaliation and job loss by challenging discrimination and participating in litigation, according to Maya Raghu, senior counsel at the National

Women’s Law Center. It may also embolden federal contractors to cut compliance corners and step back from pay equity efforts.

The long battle between the Department of Labor’s Office of Federal Contract Compliance Programs and Oracle over allegations of systemic pay discrimination recently came to a head, with implications for workers’ civil rights and OFCCP’s future.

A Sept. 22 [decision](#) by a DOL administrative law judge could cause OFCCP to put compensation compliance reviews and systemic pay discrimination cases on the back burner—to the detriment of people facing discrimination while working for federal contractors.

Oracle Sued for Alleged Gender, Race Pay Discrimination

During the Obama administration [OFCCP sued Oracle](#), alleging gender and race based pay discrimination, and seeking \$400 million in back pay for the workers. But in November 2019, just before the pay discrimination trial began before a Department of Labor administrative law judge, Oracle filed a separate lawsuit asserting OFCCP had no authority to challenge such civil rights violations.

In August, the lead government attorney in OFCCP’s pay discrimination suit against Oracle [filed a whistleblower complaint](#) against Secretary of Labor Eugene Scalia. She claimed that Scalia interfered to push a low-ball settlement with Oracle—and retaliated against her by ordering her to take a different DOL job thousands of miles away from her home when she objected. Notably, Oracle co-founder Larry Ellison has a close relationship with this administration as a fund-raiser for President Trump.

Against this backdrop of allegations that the DOL secretary pushed for a sweet deal for Oracle, even as Oracle seeks to defang DOL’s civil rights enforcement powers, the DOL ALJ issued its [Sept. 22 opinion](#) recommending dismissal of OFCCP’s suit.

ALJ Finds Government Failed to Show Pattern in Pay Disparities

The ALJ found that the government’s evidence and statistical analysis failed to establish the pay disparities were due to a pattern or practice of pay discrimination, or due to Oracle’s practice of relying on prior salary to set compensation. OFCCP is [considering whether to appeal](#).

The ALJ’s decision has significant implications for OFCCP’s future enforcement efforts. The decision could cause OFCCP to put compensation compliance reviews and systemic pay discrimination cases on the back burner—to the detriment of people facing discrimination while working for federal contractors.

That absence of agency compliance and enforcement activities may make workers less willing to come forward to challenge discrimination and participate in litigation, and risk retaliation including job loss. At the same time, the decision may embolden federal contractors to cut compliance corners and step back from pay equity efforts. Contractors may be less willing to settle and feel more confident proceeding with litigation.

OFCCP Has Undermined Worker Protections

There’s also larger story about this administration’s approach to enforcement and OFCCP’s ability to engage in meaningful enforcement altogether.

Since the administration's failed attempt to eliminate OFCCP in 2017, the agency has taken at best a hands-off approach to enforcement and undermined worker rights and protections.

In 2019 OFCCP announced it would ignore EEO-1 pay data in its enforcement activities. Additionally, OFCCP has announced a rule expanding religious exemptions from discrimination protections, which would allow federal contractors to use their religious beliefs to discriminate and engage in otherwise unlawful behavior. And DOL has issued rules on independent contractors and joint employment that seek to insulate federal contractors from accountability from workplace violations.

And now OFCCP is diverting scarce resources to implement a dangerous new executive order which seeks to control the content of federal contractors' and agencies' diversity and inclusion trainings. OFCCP is scrutinizing Microsoft and Wells Fargo's diversity initiatives, suggesting they could constitute race discrimination.

OFCCP's Future and Workers' Rights Are on the Line

Where does OFCCP go from here? The government attorneys representing OFCCP have requested a 75-day extension of the deadline to appeal the ALJ's decision.

An appeal also has implications for Oracle's federal lawsuit against OFCCP, where Oracle seeks to invalidate the most meaningful aspects of OFCCP's civil rights enforcement scheme, leaving it broadly unable to address discrimination against all workers employed by federal contractors.

OFCCP's decision not to appeal may render Oracle's lawsuit moot, but still weaken future pay discrimination enforcement efforts. If OFCCP does appeal, Oracle will be empowered to maintain its quest to eliminate OFCCP's enforcement scheme.

Ultimately, there's a real question as to whether this administration is interested in defending itself and OFCCP's enforcement authority. This open question led the National Women's Law Center, with our co-counsel Democracy Forward and Massey & Gail, to represent two intervenor unions in the federal lawsuit that Oracle brought against OFCCP.

Broader Impact of the Dispute

The potential harm to the unions and their members due to OFCCP's curtailed enforcement efforts is even greater given the suggestion that DOL leadership may be overly sympathetic to Oracle. And a victory by Oracle against OFCCP civil rights enforcement authority would potentially harm the ability of other federal agencies to make and enforce regulations in a variety of areas, including consumer and environmental protection.

As working people face a number of pandemic-induced crises and threats to their jobs, health, and housing, they need to know that the federal government is going to protect, and not sacrifice, their right to work with equality, dignity, and safety.

This column does not necessarily reflect the opinion of The Bureau of National Affairs, Inc. or its owners.

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Article Title: [DOL Set to Enforce President Trump's Executive Order 13950 on Combatting Race and Sex Stereotyping](#)

News Source: JDSUPRA

Reporter's Name: Elliot Griffin, Diana Joskowicz, Brian D. Pedrow, Dee Spagnuolo

Date: October 19, 2020

DOL Set to Enforce President Trump's Executive Order 13950 on Combatting Race and Sex Stereotyping

[Elliot Griffin](#), [Diana Joskowicz](#), [Brian D. Pedrow](#), [Dee Spagnuolo](#)
[Ballard Spahr LLP](#)

Ballard Spahr
LLP

Summary

President Trump issued an Executive Order September 22, 2020, on Combatting Race and Sex Stereotyping that prohibits federal contractors and perhaps grant recipients from certain anti-bias employee training practices. In addition to the Executive Order and corresponding guidance, the Department of Labor's Office of Federal Contract Compliance Programs is reviewing some diverse hiring programs for potential reverse discrimination.

The Upshot

- The OFCCP has taken an aggressive stance recently in investigating purported reverse discrimination issues based on employers' public announcements about racial equity programs that include workforce measures to increase or enhance diversity.
- This approach may signal that the OFCCP also will proceed aggressively under the new Executive Order when it comes to investigating workplace diversity training programs.

The Bottom Line

The application of the latest Executive Order is not limited to federal agencies and extends to federal contractors and potentially grant recipients. As such, federal contractors (and grant recipients) should review their training curricula to ensure compliance with the Order.

FULL ALERT

As we previously reported [here](#), on September 22, 2020, President Trump issued an [Executive Order on Combatting Race and Sex Stereotyping](#) that prohibits federal contractors and perhaps grant recipients from certain anti-bias employee training practices (the Executive Order). Department of Labor Secretary Eugene Scalia recently commented that the Executive Order is not "intended to prevent companies from . . . provid[ing] training on nondiscrimination, respect for others in the workplace regardless of sex, race and the like," but to prohibit "highly offensive" training regarding implicit bias.

To further those stated-goals, the Department of Labor (DOL) issued a September 28, 2020, [press release](#) announcing that its Office of Federal Contract Compliance Programs (OFCCP) established the "OFCCP Complaint Hotline to Combat Race and Sex Stereotyping,"

as mandated by Section 4.4(b) of the Executive Order. The hotline will be used to:

investigate complaints received under both [the Executive Order] as well as Executive Order 11246 alleging that a federal contractor is utilizing such training programs in violation of the contractor's obligations under those orders. The Department shall take appropriate enforcement action and provide remedial relief, as appropriate.

While the specific requirements of the Executive Order apply only to those entering into federal contracts after November 21, 2020, the press release explains that current training programs may violate existing Executive Order 11246, "which prohibits discrimination based on race, color, religion, sex, sexual orientation, gender identity, national origin, and for inquiring about, discussing, or disclosing your compensation or the compensation of others." The OFCCP also included a reminder that it enforces Section 503 of the Rehabilitation Act of 1973 and the Vietnam Veterans' Readjustment Assistance Act of 1974, which prohibit contractor discrimination against employees because of membership in a protected class, or against applicants or employees because of inquiries or discussions regarding compensation, as well as retaliation.

Additionally, on October 7, 2020, the DOL issued guidance regarding the Executive Order's requirements, which consisted of answering nine frequently asked questions (FAQs). For the most part, the FAQs parrot the provisions of the Executive Order, with a few exceptions. First, in an attempt to further delineate between permissible and impermissible training under the Executive Order, the FAQs state:

Unconscious or implicit bias training is prohibited to the extent it teaches or implies that an individual, by virtue of his or her race, sex, and/or national origin, is racist, sexist, oppressive, or biased, whether consciously or unconsciously.

Training is not prohibited if it is designed to inform workers, or foster discussion, about pre-conceptions, opinions, or stereotypes that people—regardless of their race or sex—may have regarding people who are different, which could influence a worker's conduct or speech and be perceived by others as offensive.

However, references to "training" have raised questions about the extent to which educational institutions in receipt of federal financial assistance may include topics of diversity, equity, and inclusion (DE&I) in their curricula. While the Executive Order provides that "[n]othing in this order shall be construed to prohibit discussing, as part of a larger course of academic instruction, the divisive concepts listed in section 2(a) of this order in an objective manner and without endorsement," it remains to be seen how "objective" will be defined in this context.

Next, and similar to the press release, the FAQs restate that the OFCCP may investigate claims of discrimination under Executive Order 11246 at any time, and take the position that training that violates the Executive Order "may also violate the affirmative and nondiscrimination obligations of Executive Order 11246."

In case the DOL's intent to enforce both Orders was not clear enough, the FAQs conclude by stating that the OFCCP will issue a Request for Information from federal contractors, subcontractors, and employees by October 22, 2020, as required by the Executive Order, which will be for "training, workshops, or similar programming provided to employees that may be in violation of Executive Orders 11246 or 13950."

The OFCCP has taken an aggressive stance recently in investigating purported reverse discrimination issues based on employers' public announcements about racial equity programs that include workforce measures to increase or enhance diversity. In the wake of civil unrest across the country and increased discourse about the inequities faced by Black people in corporate America, employers have launched comprehensive diversity efforts, including initiatives aimed at enhancing workforce diversity. Shortly after the Executive Order was issued, the DOL announced investigations into whether these initiatives constitute unlawful hiring preferences or quotas.

This approach may signal that the OFCCP also will proceed aggressively under the new Executive Order when it comes to investigating workplace diversity training programs.

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Article Title: [Anti-bias hotline adds to growing confusion surrounding Trump executive order](#)

News Source: Washington Technology

Reporter's Name: Nick Wakeman

Date: October 19, 2020

Anti-bias hotline adds to growing confusion surrounding Trump executive order

Rules are not in place yet to enforce President Trump's executive order banning certain types of anti-bias and discrimination training by agencies and contractors, but the Labor Department says [it opened its complaint hotline](#) because violations of existing anti-discrimination laws can be investigated.

The hotline has drawn complaints because Labor opened it before the rules have been released. But a department spokesman said via email that "some of the conduct discussed in [the executive order] is capable of violating OFCCP's already-existing anti-discrimination laws." OFCCP refers to Labor's Office of Federal Contract Compliance Programs.

That email went on to offer an example of possible conduct that could be reported. "It may violate the law for an employer to ascribe certain character traits – especially negative ones – to employees simply because of their race or sex," the spokesman wrote.

In addition to the email form, Labor also has a phone number (202-343-2008) that people can call to lodge a complaint and has released a [FAQ page](#) about the executive order.

The [FAQs](#) are a quick way to familiarizing yourself with Executive Order 13950, even if you disagree with it.

The answer to question one -- when does the executive order become effective -- offers a few tidbits. The executive order is effective immediately, hence the reason Labor so quickly opened its hotline. But requirements for contractors and subcontractors requirements will apply to contracts that are entered into 60 days after the executive order, which Labor puts at Nov. 21.

For its ability to investigate complaints right now, Labor refers to Executive Order 11246 that was signed by President Johnson on Sept. 24, 1965. I included the exact date because that is when I turned two years old. Johnson's executive order and related legislation banned the practice of employment discrimination by federal contractors on the basis of sex or race.

Labor's FAQs also get at the Trump administration's argument that training should not paint individuals as racist or sexist solely because they are part of a particular race. This gets at the Trump administration's opposition to concepts such as unconscious bias and systemic racism.

The Sept. 22 executive order has caused a lot of angst among federal contractors, many of whom have been pushing diversity and inclusion as central values of their companies. Many of these actions pre-date the killing of George Floyd in May and the rise of the current social justice movement.

The Office of Federal Procurement Policy is holding what it calls a "listening session" with contractors later this week to take questions and hear concerns from industry. Hopefully, they will share some information on the interim rule set to come out next month that will spell out the contract requirements to enforce the Trump executive order.

As some in industry have told me, right now there are more uncertainties and confusion than certainties surrounding the executive order and how it will be implemented.

For example, the Labor Department FAQs indicate the contract requirements will apply to new contracts. But a [Sept. 28 memo](#) from the Office of Management and Budget says that “every government contract must include the provisions required by Section 4 of the E.O.” E.O. stands for executive order.

A few paragraphs later, the OMB memo also says that future contracts must include the provisions in Section 4.

So is it all contracts or just future contracts? If it is all contracts, will that mean that every existing contract will need to go through a contract modification process? Or will the government use a class deviation to effectively modify all contracts at once?

That’s just one example.

There also are concerns about the inventory requirement. Later this week, Labor is expected to issue a Federal Register notice asking contractors to provide information on the diversity training and workshops they provide, including copies of the training. How will this information be collected and what does “copies” mean?

There are no legal challenges yet to the executive order and those won’t occur until someone -- mostly likely a contractor -- can demonstrate some kind of damage because of the executive order.

Damage almost always means money, so if the executive order leads to cancelled contracts or partially cancelled contracts, or suspensions or debarments, then we’ll likely see lawsuits filed in federal court. Cancellations, terminations, suspensions and debarments are all mentioned the executive order as tools for enforcing the executive order.

Until then some action is taken beyond the executive order, there is little companies can do to proactively fight back. Right now, companies have to wait and see if they are hurt. Some company is going to get hurt before they can take action.

If I’m wrong about this, please let me know.

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Article Title: [OFCCP Week In Review: October 2020 #3](#)

News Source: JDSUPRA

Reporter’s Name: Candee Chambers, John Fox, Jennifer Polcer

Date: October 19, 2020

OFCCP Week In Review: October 2020 #3

[Candee Chambers](#), [John Fox](#), [Jennifer Polcer](#)
[DirectEmployers Association](#)



The DE OFCCP Week in Review (WIR) is a simple, fast and direct summary of relevant happenings in the OFCCP regulatory environment, authored by experts John C. Fox, Candee Chambers and Jennifer Polcer. In today’s edition, they discuss:

- U.S. Secretary of Labor Commemorates Columbus Day and American Heritage
- Comment Now on Developing Jobs for Individuals with Disabilities
- Sam Maiden Heads To Retirement
- Removing the Obstacles for a Fully Inclusive Workforce
- Jocelyn Samuels (and later) Andrea Lucas Sworn in as EEOC Commissioners
- Comment Now on Veteran Employment
- EEOC Charge Filing Goes Digital and “No Cause” Determinations Clarified to Not Mean Claims have No Merit
- Disability Staff Training Resources In Support of NDEAM
- Howard Jenkins Jr. Inducted into the Government Hall of Fame
- OFCCP Revamped Its Employment Referral Resource Directory

Monday, October 12, 2020: U.S. Secretary of Labor Commemorates Columbus Day and American Heritage

U.S. Secretary of Labor Eugene Scalia traveled to Steubenville, Ohio, where he delivered remarks at Franciscan University of Steubenville, to commemorate Columbus Day and America’s national heritage.

“Through the centuries, Columbus came to represent the spirit of adventure and discovery that we associate with America—our faith in our capacity to seek and find something new and better. We have many heroes who personify our political ideals, but no figure so associated with the questing, the entrepreneurialism, the hope in the new that is part of the American spirit. No other figure so represents our aspiration to make, here in this country, something new and better than the oppression and rigidity associated with that Old World.”

“So today, Columbus Day, we reflect on the thrill of discovery of a New World, and the opportunity it presented to “make the world anew,” freed from the religious wars, hereditary monarchies, and class restrictions that burdened the Old World. The hope, the optimism, the capacity for change in a New World are part of our heritage as Americans. When Columbus set sail to that New World, he set us all on course to a better world. We should never forget that.”

Monday, October 12, 2020: Comment Now on Developing Jobs for Individuals with Disabilities

The U.S. Department of Labor’s Office of Disability Employment Policy (ODEP) continues its efforts to support American workers with disabilities and position the economy for a strong rebound. The Agency is hosting a dialogue to learn how job developers help individuals with disabilities obtain competitive integrated employment during these times of increased health risks and unemployment.

Who should speak up?

- Individuals with disabilities (IWD)
- Family members of IWDs
- Advocates
- Employment specialists
- Vocational Rehabilitation counselors,
- Job coaches
- Employers

Share your ideas on the topics below:

1. Addressing health risks
2. Balancing self-determination and health
3. Addressing increased unemployment

The national dialogue is open through October 18, 2020.

Tuesday October 13, 2020: Sam Maiden Heads To Retirement

Sam Maiden called to confirm our story last Monday that he had retired as the Regional Director for the Southeast Region of OFCCP (Atlanta). Sam wished to impart that he had tendered his retirement papers in September and is now looking forward to an opportunity to relax and enjoy his retirement after a long career with the OFCCP.

Tuesday, October 13, 2020: Removing the Obstacles for a Fully Inclusive Workforce

The title speaks for itself, but the question is often, how? Luckily, [Janet Fiore](#) – a renowned national authority on disability, diversity, and compliance policy – joined the [DE Talk podcast](#) to tackle this challenging topic. During this podcast, DE Executive Director Candee Chambers and Janet discuss their personal experiences with disabilities, the reason why Janet felt compelled to become an entrepreneur in disability education, The Sierra Group's DisabilityEtiquette© course, and DisabilityRecruiter© Certification, and so much more!

Did you know that only 7% of companies with diversity and inclusion programs have a focus on disability inclusion? How can organizations change the narrative to reach a truly diverse population of candidates?

Tune in to discover the work The Sierra Group is doing to help so many employers remove the obstacles and attain a fully inclusive workforce by listening online or navigating to [Apple Podcast](#), [Google Podcast](#), [Spotify](#), or wherever you listen to your favorite podcast. As always, [subscribe](#) to be the first to hear new episodes and conversations that inspire your everyday work.

Wednesday, October 14, 2020: Jocelyn Samuels (and later) Andrea Lucas Sworn in as EEOC Commissioners

The Equal Employment Opportunity Commission (EEOC) [announced](#) on Wednesday October 14th the swearing-in of Jocelyn Samuels (D) to the Commission and on Monday October 19th the swearing in of Andrea Lucas (R). Ms. Samuels' term will expire July 1, 2021 and Ms. Lucas' term will expire July 1, 2025. Samuels and Lucas now join Chair Janet Dhillon (R), Vice Chair Keith Sonderling (R), and Commissioner Charlotte Burrows (D) on the presidentially appointed bipartisan Commission. The Commission is now fully staffed with all five Members onboard and at work with three Republicans and two Democrats.

Samuels: From June 2017 until the present, Jocelyn Samuels was Executive Director of the Williams Institute at the UCLA School of Law. Before that, Samuels was the Director of the Office for Civil Rights at the U.S. Department of Health & Human Services and served as Acting Assistant Attorney General for Civil Rights at the U.S. Department of Justice during the Obama Administration. Earlier in her career, she worked as a senior policy attorney at the U.S. Equal Employment Opportunity Commission, as Labor Counsel to Senator Ted Kennedy, and as the Vice President for Education & Employment at the National Women's Law Center in Washington, D.C. She is a graduate of Middlebury College and Columbia University Law School.

"I am committed to advancing the rights of all Americans, regardless of their race, gender, or other protected characteristics," Samuels said. "It is an incredible honor to apply these principles to the critical work of the EEOC to remove barriers to employment and foster inclusive and diverse workplaces."

LUCAS: According to the [EEOC's Press Release](#), prior to her appointment to the EEOC, Ms. Lucas was a senior associate in the Washington, D.C. office of Gibson, Dunn & Crutcher LLP. [Editor's Note: USDOL Secretary Eugene Scalia was the Co-Chair of the Washington D.C. Labor and Employment Group and worked with Ms. Lucas]. She was a member of the firm's labor and employment practice group as well as its litigation department. She has represented and advised employers on a wide-range of matters, including significant work around employment discrimination. Ms. Lucas received her B.A., magna cum laude, from the University of Pennsylvania and her J.D. from the University of Virginia.

"I'm honored to serve as a Commissioner of the EEOC, Lucas said. The American workforce is our country's most valuable resource and ensuring that all workers have equal opportunity is critical to keeping our workplaces strong and safe". "I look forward to working

with my colleagues to prevent and remedy employment discrimination across our country and to address the new challenges for our country and the Commission posed by the complexities of the twenty-first century workplace and the COVID-19 pandemic,” Lucas said.

Wednesday, October 14, 2020: Comment Now on Veteran Employment

The Veterans’ Employment and Training Service (VETS) Agency of the U.S. Department of Labor (DOL) announced its upcoming meeting agenda.

The Advisory Committee on Veterans’ Employment, Training, and Employer Outreach (**ACVETEO**) will discuss the DOL core programs and services that assist veterans seeking employment and raise employer awareness of the advantages of hiring veterans. There will be an opportunity for individuals or organizations to address the committee. Any individual or organization that wishes to do so should contact Mr. Gregory Green at ACVETEO@dol.gov.

Meeting Details

- Wednesday, November 4, 2020
- 9:00 a.m. – 12:00 p.m. (EST)
- WebEx: See ‘Meeting Updates’ tab at <https://www.dol.gov/agencies/vets/about/advisorycommittee>.

Note: All meeting participants should submit a notice of intent to attend by Monday, October 26, 2020, via email to Mr. Gregory Green at ACVETEO@dol.gov, subject line “November 2020 ACVETEO Meeting.”

Thursday, October 15, 2020: EEOC Charge Filing Goes Digital and “No Cause” Determinations Clarified to Not Mean Claims have No Merit

The U.S. Equal Employment Opportunity Commission (EEOC) issued a **Final Rule** that amends its procedural regulations under Title VII, ADA, and GINA to explicitly provide for digital transmissions of documents and update no cause determination procedures.

Last February, the EEOC published a Notice of Proposed Rulemaking (NPRM) seeking public comment on proposed revisions to the EEOC’s procedural regulations for employment discrimination charges.

The Final Rule addresses digital submissions of charges and the clarity of the communication closing an investigation and delegation. It makes no changes to the charge filing process but amends portions of the EEOC’s regulations in parts 1601 and 1626 to account for the digital transmission of charge-related documents. Revisions to the EEOC’s procedural regulations do not create a new digital transmission system of charge-related documents.

The Final Rule also amends:

- section 1601.18(a) to add language communicating that a dismissal includes notice of the charging party’s statutory right to file a lawsuit,
- section 1601.19(a) to add language clarifying the meaning and import of the EEOC’s issuance of a “no cause” determination, specifically, that such a dismissal does not mean the claims have no merit,
- sections 1601.18(a) and 1601.19(a) to bring greater efficiencies to charge closures by permitting further delegation.

The Commission’s action as to the meaning of “no cause” determinations has been a sore spot for applicants and employees over the years. Employers have often defended any subsequent lawsuit an applicant or employee might bring after a Commission “no cause” finding by arguing that the court should dismiss the lawsuit **for want of merit**, as did the EEOC.

See the Agency’s press release for additional information.

Thursday, October 15, 2020: Disability Staff Training Resources In Support of NDEAM

In support of National Disability Employment Awareness Month (NDEAM), the Office of Disability Employment Policy (ODEP) and the Partnership on Employment and Accessible Technology (PEAT) announced their partnership in creating a Staff Training Resource

Webpage. The website contains valuable links to accessibility education and online training on the following subjects:

- disability basics, typical barriers people with disabilities encounter in the workplace, and common solutions to these barriers;
- examples of accessibility solutions that can benefit all users, not just users with disabilities;
- the advantages of an inclusive workplace and an organization’s overall commitment to diversity;
- the importance of preventing inaccessibility by building, buying, and implementing accessible technology;
- How to create accessible documents, emails, social media posts, websites, and more!

Thursday, October 15, 2020: Howard Jenkins Jr. Inducted into the Government Hall of Fame

The National Labor Relations Board (NLRB) **announced** the celebration of the induction of former Board Member **Howard Jenkins Jr.** into the Government Hall of Fame.

Howard Jenkins Jr. was appointed to the NLRB by President Kennedy in 1963. The first African American to serve on the Board, Member Jenkins was sworn in on August 28, 1963, the day after Martin Luther King’s historic civil rights march on Washington. During his twenty years on the NLRB, Member Jenkins fought to ensure that discrimination of any kind had no place in U.S. labor law. He contributed to core doctrines that still provide the framework for modern labor relations, such as:

- the duty to bargain under *Fireboard and First National Maintenance*,
- bargaining orders under *Gissel*, and
- successorship under *Burns* (in which the Supreme Court upheld his dissenting opinion that a successor employer should not generally be bound by the predecessor’s contract).

“Member Jenkins is deserving of this distinguished honor, and the NLRB is proud that one of our finest has been selected for the Government Hall of Fame,” said NLRB Chairman John Ring.

Friday, October 16, 2020: OFCCP Revamped Its Employment Referral Resource Directory

The Office of Federal Contract Compliance Programs (OFCCP) **announced** that it has “revamped” the **Employment Referral Resource Directory (ERRD)** hosted on its website. The ERRD lists government and nonprofit organizations that may help employers identify local job referral services for veterans, individuals with disabilities, women, and minority groups.

The ERRD now provides a search component with search results merged onto one page, and multi-selection is now available when using the search fields. The Directory is also now user friendly on mobile and desktop browsers.

Revamped – but what about updated?

A disclaimer on the ERRD states:

This Directory contains information and links to information created and maintained by organizations outside of the Department of Labor. OFCCP does not control or guarantee the accuracy, relevance, timeliness, or completeness of this outside information. Further, the inclusion of links is not intended to endorse any views expressed or implied or recommend products or services offered by the author of the reference or the organization operating the site on which the reference is maintained.

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Article Title: [Shipbuilder to Pay \\$3.5 Million to Settle Hiring Bias Claims \(1\)](#)

News Source: Bloomberg Law

Reporter’s Name: Cheryl Bolen

Date: October 19, 2020



Equipment sits on the deck of an aircraft carrier during outfitting and testing as the USS Enterprise (CVN 65) floats pier side during inactivation at Newport News Shipbuilding on April 28, 2014.

Photographer: Andrew Harrer/Bloomberg

Shipbuilder to Pay \$3.5 Million to Settle Hiring Bias Claims (1)

By [Cheryl Bolen](#)

Oct. 19, 2020, 5:54 PM; Updated: Oct. 19, 2020, 6:44 PM

[Listen](#)

- Newport News Shipbuilding faced DOL agency's charges
- 141 Black job applicants alleged hiring discrimination

Virginia-based Newport News Shipbuilding has agreed to pay \$3.5 million to settle discrimination charges involving 141 Black job applicants over nearly a year.

The Labor Department's Office of Federal Contract Compliance Programs alleged that between November 2011 and October 2012, the shipbuilder failed to apply its selection criteria uniformly for all applicants, discriminating against Black job applicants on the basis of their race.

Ten different positions were affected, including deck electrician, outside machinist, fitter, pipefitter, sheet metal worker, structural welder, refueler, maintenance electrician, molder, and machine hand.

The total settlement fund amount includes \$2,693,097.28 in back pay and \$806,902.72 in interest to resolve specific violations, OFCCP said in a [statement](#).

Newport News Shipbuilding is committed to equal employment in its hiring and employment practices, said Duane Bourne, media relations manager for the company, in an email to Bloomberg Law. OFCCP alleged—during a period when the company received nearly 50,000 job applications—that the company had a statistical shortfall of 141 Black and female hires, he said.

“We strongly deny that we discriminated against any of the applicants during the hiring process,” Bourne said. “We fully cooperated with the OFCCP’s audit, and it’s important to note that the agency did not identify any specific discriminatory practice by any of our employees in its findings.”

The settlement requires that as vacancies occur in the 10 positions cited, Newport News Shipbuilding must consider hiring all of the qualified previous applicants until 141 eligible applicants are hired or the list of eligible applicants is exhausted.

Further, the shipbuilder must document the job offers and hires to the OFCCP, including job offers made and reasons for rejection, for a five-year monitoring period under the agreement, and certify that it has updated its Affirmative Action Program.

The settlement agreement includes additional steps the company must take to remedy its past behavior, such as establishing a monitored hotline for employees to make hostile work environment complaints and a nondiscrimination performance standard for hiring managers.

(Updated with comment from the company in the fifth and sixth paragraphs.)

To contact the reporter on this story: Cheryl Bolen in Washington at cbolen@bgov.com

To contact the editors responsible for this story: Karl Hardy at khardy@bloomberglaw.com; Martha Mueller Neff at mmuellerneff@bloomberglaw.com

With Appreciation,

Shenita A. Benjamin

Sr. Executive Assistant

Office of Federal Contract Compliance Programs

U.S. Department of Labor

P: (202) 693-1165

Benjamin.Shenita.A@dol.gov



From: Seely, Christopher - OFCCP [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=6B2B2010AAF743CEB373A758390001A1-SEELY, CHRI]
Sent: 10/21/2020 3:32:21 PM
To: Davis, Karlyn - ASP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d03793b1358f4852bd59145edb43d230-Davis, Karl]
CC: Williams, Tina T - OFCCP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=de1ca1bb58004746a50104bd40a50623-Williams, T]; Swirsky, Stephanie - ASP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0c6029e716614ee78e163cbcc8e5e250-Swirsky, St]; 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,]; Bickerstaffe, Keir - SOL [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=76946342408840629d14d5b8c536a764-Bickerstaff]; Carson, Sarah J - OFCCP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8cfec665af6d40488eacfbfc4015aa81-Carson, Sar]; Regan, Jaime L - OFCCP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=230d708eea73498fac29acbefb29b850-Beler, Jaim]; Dawkins, Laura M - ASP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7d2184500efa4946b40d2aaf82b35fb3-Dawkins, La]
Subject: PDN Passback
Attachments: Resolution Procedures Final Rule (Consolidated OIRA Passback).docx

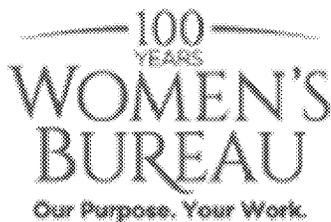
Karlyn,

Attached are OFCCP's responses to the comments received in the OIRA passback. Please let me know if you have any questions.

Thank you,

Chris Seely
Acting Deputy Director
Division of Policy and Program Development
Office of Federal Contract Compliance Programs
U.S. Department of Labor

(b) 6 (mobile)
Pronouns: he/him/his



From: Leen, Craig - OFCCP [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5FFD4A5B3CC74F49A5D2BF4C747416D4-LEEN, CRAIG]
Sent: 10/22/2020 10:19:04 AM
To: Williams, Tina T - OFCCP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=de1ca1bb58004746a50104bd40a50623-Williams, T]; Bickerstaffe, Keir - SOL [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=76946342408840629d14d5b8c536a764-Bickerstaff]; Davis, Karlyn - ASP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d03793b1358f4852bd59145edb43d230-Davis, Karl]
CC: Taylor, Timothy J - SOL [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=363c0a5d85ca453eb4d8a2a62a9c286f-Taylor, Tim]; Wolfson, Jonathan A - ASP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c933d3c8e9624d7092e25b4a2b47f4cf-Wolfson, Jo]; 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]; Gean, Lissette - OFCCP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bbb9a13178c24aadb6b7613f2f9041f3-Gean, Lisse]; Seely, Christopher - OFCCP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6b2b2010aaf743ceb373a758390001a1-Seely, Chri]
Subject: PDN Rule Passback
Attachments: Resolution Procedures Final Rule (Consolidated OIRA Passback) - OSEC SOLFO ASP edits 10.22.docx

Here is the passback as approved by OSEC, SOL, ASP, and OFCCP. Please finalize and submit. I've approved.
Thanks, Craig

[Get Outlook for iOS](#)

From: Benjamin, Shenita A - OFCCP CTR [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=9CB2432A12734A9BBDB85537FD322DFD-BENJAMIN, S]
Sent: 10/22/2020 12:08:41 PM
To: Leen, Craig - OFCCP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ffd4a5b3cc74f49a5d2bf4c747416d4-Leen, Craig]; 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]
CC: LaJeunesse, Robert - OFCCP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c9f3ffa568704a2db7b79e20a25c080e-LaJeunesse,]; Collins, Aida Y - OFCCP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=32a0355e614f48fcaea5dc512773d16a-Collins, Ai]; Corbin, Jonide - OFCCP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7562f2e8d23a437782a0ad40cc50cba9-Simon, Joni]; Harewood, Fiona A - OFCCP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8b1d63f61a974190973f614c39868069-Harewood, F]; Hodge, Michele - OFCCP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9a2682d410ed45deafdb13d08bcf7b39-Hodge, Mich]; Navarro, Carmen - OFCCP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5666fc8d7dc041e1b2e5e3fe231df766-Navarro, Ca]; Rodriguez, Luis N - OFCCP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=f015694f022042afa0bcb2900374beed-Rodriguez,]; Sen Diana S - OFCCP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e39e65e9739f4cfcb3368f451bfcc23a-Sen, Diana]; Suhr, Jane - OFCCP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d86962c51c1d44aaa66fa16566997d4c-Suhr, Jane]; Smith, Kelley - OFCCP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0cea2c4e5e114c0daafc5aabb237c96a-Smith, Kell]; 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]; Kraak, Margaret - OFCCP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5d6c06403a2548b7a2fe40c35cc5e1f2-Kraak, Marg]; Spalding, Candice - OFCCP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=Spalding, Candice - OFCCP]; Williams, Tina T - OFCCP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=de1ca1bb58004746a50104bd40a50623-Williams, T]; Leung, Kenneth - OFCCP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e83ead72f1124a19a6565d1067874925-Leung, Kenn]; Seely, Christopher - OFCCP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6b2b2010aaf743ceb373a758390001a1-Seely, Chri]; Parker, Walter - OFCCP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a64fa9f8e7c7440ea9f69e2d2643fff2-Parker, Wal]; Tretheway, Andrea - OFCCP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4bcadc1bd011a4f19a909b742d2b454dc-Tretheway,]; Speer, Melissa - OFCCP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b53edd248cbd4e9a9e572bb94b966ece-Speer, Meli]; Stergio, Marcus - OFCCP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=37788d9ffe5a46c58fe4cae3ce987968-Stergio, Ma]
Subject: Update: Thursday Morning Press Releases/Daily News Clippings: October 22, 2020

Good afternoon all,

Please see additional article regarding OFCCP's settlement with the University of Connecticut.

Thursday Morning News Clips: October 22, 2020

Article #	Paper	Title
1	Sports Illustrated	U.S. Labor Department Finds Women Basketball Coaches at UConn Were Underpaid

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

Article Title: [U.S. Labor Department Finds Women Basketball Coaches at UConn Were Underpaid](#)

News Source: Sports Illustrated

Reporter's Name: Associated Press

Date: October 20, 2020

U.S. Labor Department Finds Women Basketball Coaches at UConn Were Underpaid

Author:

[Associated Press](#)

Publish date:

Oct 20, 2020



Charles LeClaire-USA TODAY Sports

The University of Connecticut has agreed to pay a total of just under \$250,000 to seven women (including four members of Geno Auriemma's 2014 women's basketball coaching staff) after the U.S. Labor Department found they had been underpaid when compared with men in similar positions.

A total of \$249,539 will go to the women, who were identified by the Labor Department as two law professors and five women who hold the title of Specialist IA and Specialist IIA in the school's athletic department.

UConn, responding to an email request from The Associated Press, identified those employees by title as its women's associate head basketball coach (Chris Dailey), the team's two assistant coaches in 2014 (Shea Ralph and Marisa Moseley), the director of women's basketball operations (Sarah Darras) and the director of football operations (Sarah Lawless).

The agreement follows a review by the U.S. Department of Labor's Office of Federal Contract Compliance Programs.

UConn spokeswoman Stephanie Reitz said the school contends each case had "complexities that were unique to those employees, but which UConn maintains was not due to gender."

She said the school identified the issue on its own and already has paid one employee \$92,290 in adjusted compensation. The school did not identify that employee.

But the Labor Department said it found that significant pay disparities remained "even when legitimate factors affecting pay were taken into account."

The six other employees will receive payments ranging from \$5,000 to \$50,000, according to the settlement.

Dailey had received just under \$313,000 in salary and fringe benefits from the school during the fiscal year that ended in 2014, according to the state. Ralph received just over \$272,000 and Moseley was paid just over \$200,600.

The men's basketball team did not have an associate head coach that year. Head coach Kevin Ollie was paid just under \$1 million. Men's basketball assistant coach Glen Miller received just over \$312,600 in compensation. Assistant Karl Hobbs received just under \$286,600 and assistant Ricky Moore received just under \$259,600, according to the state.

Messages seeking comment were left Tuesday by the AP for Auremma, Dailey, Ralph and Moseley.

The Labor Department said the school has agreed to perform an in-depth analysis of its total employment process and review any pay practices and implement improved policies to eliminate the possibility of gender discrimination in pay.

"The Office of Federal Contract Compliance Programs is satisfied that the University of Connecticut has addressed the issues found in our review," Craig Leen, the director of the Labor Department's compliance office said in a statement.

By
Associated Press

From: Benjamin, Shenita A - OFCCP CTR

Sent: Thursday, October 22, 2020 11:24 AM

To: Leen, Craig - OFCCP <Leen.Craig@dol.gov>; Gaglione, Robert J - OFCCP <Gaglione.Robert.J@dol.gov>; Davidson, Patricia J - OFCCP <Davidson.Patricia@dol.gov>

Cc: LaJeunesse, Robert - OFCCP <LaJeunesse.Robert@dol.gov>; Collins, Aida Y - OFCCP <Collins.Aida@dol.gov>; Corbin, Jonide - OFCCP <Corbin.Jonide@dol.gov>; Harewood, Fiona A - OFCCP <Harewood.Fiona.A@dol.gov>; Hodge, Michele - OFCCP <Hodge.Michele@dol.gov>; Navarro, Carmen - OFCCP <Navarro.Carmen@dol.gov>; Rodriguez, Luis N - OFCCP <Rodriguez.Luis.N@dol.gov>; Sen Diana S - OFCCP <Sen.Diana@dol.gov>; Suhr, Jane - OFCCP <Suhr.Jane@dol.gov>; Smith, Kelley - OFCCP <Smith.Kelley.J@dol.gov>; Gaglione, Robert J - OFCCP <Gaglione.Robert.J@dol.gov>; Gean, Lissette - OFCCP <Gean.Lissette@dol.gov>; Kaiser, Javaid - OFCCP <Kaiser.Javaid@dol.gov>; Kraak, Margaret - OFCCP <Kraak.Margaret@dol.gov>; Spalding, Candice - OFCCP <Spalding.Candice@dol.gov>; Williams, Tina T - OFCCP <Williams.Tina.T@dol.gov>; Leung, Kenneth - OFCCP <Leung.Kenneth@dol.gov>; Seely, Christopher - OFCCP <Seely.Christopher@dol.gov>; Parker, Walter - OFCCP <Parker.Walter@dol.gov>; Tretheway, Andrea - OFCCP <Tretheway.Andrea.L@dol.gov>; Speer, Melissa - OFCCP <Speer.Melissa@dol.gov>; Stergio, Marcus - OFCCP <Stergio.Marcus@dol.gov>

Subject: Thursday Morning Press Releases/Daily News Clippings: October 22, 2020

DOL006884

Thursday Morning Press Releases: October 22, 2020- None to Report

Date of Press Release	Company Name	Hyperlink to Release

Day Morning News Clips: Date (i.e., Monday Morning News Clips: 09/24/18)

Article #	Paper	Title
1	Bloomberg Law	Worker Groups Decry Brief Period to Weigh EEOC Conciliation Rule
2	Bloomberg Law	Public Input Sought on Trump 'Anti-American' Training Order (2)
3	Bloomberg Law	AT&T Settles DOL Claim It Underpaid Female Managers (1)
4	Bloomberg Law	Microsoft Shows Minimal Increases in Ranks of Black, Latino Employees (1)
5	Channel 1 Los Angeles	The Office of Federal Contract Compliance Programs (OFCCP) launched a landing page for Executive Order 13950, Combating Race and Sex Stereotyping #BREAKING
6	Washington Technology	Labor issues call for data on anti-bias training
7	JDSUPRA	OFCCP Seeks Information About Diversity Training
8	Fox Business	Microsoft's diversity efforts slow after promise to double Black workforce

Article 1 (back to top) – hyperlink to above
Article Title: Worker Groups Decry Brief Period to Weigh EEOC Conciliation Rule
News Source: Bloomberg Law
Reporter's Name: Erin Mulvaney
Date: October 21, 2020
Daily Labor Report®



The Equal Employment Opportunity Commission seal hangs inside a hearing room at its headquarters in Washington. Photographer: Andrew Harrer/Bloomberg via Getty Images

Worker Groups Decry Brief Period to Weigh EEOC Rule

By [Erin Mulvaney](#)

Oct. 21, 2020, 6:21 PM

- Proposal would alter the conciliation process
- EEOC offered truncated time frame, groups say

The EEOC should extend the time frame for the public to weigh in on proposed changes to a procedure used to resolve claims as the “unnecessarily short” period doesn’t give workers the chance to adequately respond, civil rights groups say.

The Leadership Conference on Civil and Human Rights, along with 38 other workers right and advocacy groups, [sent a letter](#) to the Equal Employment Opportunity Commission, asking for an extension of a minimum of 30 days for comment on the new alternative resolution process known as conciliation.

“This truncated time frame does not provide members of the public who have a significant stake in the conciliation process the opportunity to comment on the proposed changes and its potential impact on the rights and interests of working people and is insufficient for public comment on this proposal,” the groups said.

The EEOC uses conciliation as a voluntary alternative to litigation after it has determined that an employer has discriminated and thereby broken a workplace civil rights law. Both the employer and the worker must agree upon a resolution, or the agency can sue the employer.

The proposal, announced on Oct. 8, would furnish employers with “a summary of facts and non-privileged information there’s “reasonable cause” to believe discrimination occurred, details about the basis for a worker’s allegation of bias, sought by the agency, and “identification of a systemic, class, or pattern or practice designation.”

Employment groups have said such a proposal creates more transparency and could cut down on courtroom battles, but the scales in favor of business. The commission’s notice of proposed rulemaking would give 30 days for the public to comment.

Incomplete Test

The civil groups said in their letter that the proposal was issued before a pilot program for such a conciliation process would make it impossible for the commission and the public to study the new procedures for effectiveness.

The groups also said that the extension wouldn’t unduly harm the role of the EEOC to police employment discrimination. A long turnaround would “potentially harm millions of working people and casts a shadow on the integrity of the comment process.”

Democratic Commissioner Charlotte Burrows previously criticized the agency’s decision to shorten the comment period as “critically important and deeply flawed proposal.”

The EEOC declined to comment on the letter.

To contact the reporter on this story: Erin Mulvaney in Washington at emulvaney@bloomberglaw.com

To contact the editors responsible for this story: Martha Mueller Neff at mmuellerneff@bloomberglaw.com; Andrew Harris at aharris@bloomberglaw.com

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

Article Title: [Public Input Sought on Trump ‘Anti-American’ Training Order \(2\)](#)

News Source: Bloomberg Law

Reporter’s Name: Paige Smith

Date: October 21, 2020

Daily Labor Report®



President Donald Trump speaks during an executive order signing ceremony in Washington on July 24, 2020.
Photographer: Stefani Reynolds/Bloomberg via Getty Images

Public Input Sought on Trump ‘Anti-American’ Training (2)

By [Paige Smith](#)

Oct. 21, 2020, 9:04 AM; Updated: Oct. 21, 2020, 12:37 PM

[Listen](#)

- Trump workplace-training order signed last month
- Public comments accepted until Dec. 1

The public can now weigh in on forms of workplace training that involve “stereotyping or scapegoating” based on race in an executive order that’s sparked blowback from several business groups.

President Donald Trump late last month [banned](#) federal contractors from conducting “offensive and Anti-American” training that suggest a worker could be “inherently racist, sexist, or oppressive, whether consciously or unconsciously.”

The Labor Department’s Office of Federal Contract Compliance Programs, which polices workplace nondiscrimination for federal contractors, released a request for information Wednesday as it works to enforce Trump’s order. The deadline for feedback is Oct. 27.

Since Trump signed the order, [dozens of business associations](#) have demanded its withdrawal, saying its message is harmful to the important diversity and inclusion initiatives underway at some of the country’s top companies.

The request for information follows [Labor Department inquiries](#) into commitments by [Microsoft Corp.](#) and Wells Fargo to improve diversity amid the [national conversation](#) about workplace equality that was sparked by the death of George Floyd at the hands of police.

The request seeks public “comments, information, and materials” related to forms of training that would run afoul of the order. Contractors found in violation of the order could have their contracts rejected and potentially be prohibited from doing business with the government.

“OFCCP welcomes all forms of media and data that have in recent years been used, or that may soon be used, in both virtual and in-person trainings, workshops, or similar programming,” it said in the [request for information](#).

Compliance Assistance

The administration previously set up a dedicated email address and a telephone [hotline for federal contractors’ employees](#) to report “anti-American race and sex stereotyping and scapegoating” in the workplace.

The agency will use information submitted by the public to develop “useful compliance assistance materials and effective communication” in line with Trump’s order, OFCCP Director Craig Leen said in a statement.

Compliance assistance will be provided to companies that submit materials to the Labor Department, as requested, according to the [request for information](#).

Potential Enforcement

Leen, discussing the request during a call with stakeholders Wednesday, described the effort as “informational in nature.”

He encouraged workers to submit whistleblower complaints on specific trainings through the telephone hotline and decisions via the public request for information.

He pointed out that there are similarities between the new order and [Executive Order 11246](#), which the agency has enforced. It outlaws federal contractors from discriminating against workers on the basis of race, color, religion, sex, sexual orientation, and national origin. It requires contractors to take affirmative action to ensure equal employment opportunity.

“Contractors must not discriminate through steering, stereotyping, preferences, or quotas, under the non-discrimination order,” Leen said. “There is overlap.”

The new training order will apply to federal contracts entered into [after Nov. 21](#). Leen said, however, that given the overlap, the agency could take enforcement action before that date.

“If we do get a complaint, and we believe it’s a violation of 11246, we will act on it now,” Leen said.

(Updated with additional reporting throughout.)

To contact the reporter on this story: Paige Smith in Washington at psmith@bloomberglaw.com

To contact the editors responsible for this story: Jay-Anne B. Casuga at jcasuga@bloomberglaw.com; Andrew Harris at aharris@bloomberglaw.com; John Lauinger at jlauinger@bloomberglaw.com

Article 3 ([back to top](#))

Article Title: [AT&T Settles DOL Claim It Underpaid Female Managers \(1\)](#)

News Source: Bloomberg Law

Reporter’s Name: Paige Smith

Date: October 21, 2020

Daily Labor Report®



An AT&T store is seen on 5th Avenue in New York on October 23, 2016.

Microsoft Shows Minimal Increases in Ranks of Black Employees (1)

By Dina Bass

Oct. 21, 2020, 2:45 PM

[Listen](#)

Microsoft Corp., which in June announced a plan to double the number of Black managers and leaders at the company, released data today that show the company still struggling to meaningfully increase Black and Latino representation in its workforce.

The software maker said it increased the proportion of both groups by 0.3 percentage points in the past year, with Black employees increasing to 6.6% in the U.S. workforce and Latino employees increasing to 6.6%. The U.S. Census Bureau [estimates](#) each group accounts for roughly 10% of the country's population. "Racial and ethnic minority communities have largely seen incremental progress and there is still a long way to go," wrote Chief Diversity Officer Lindsay-Rae McIntyre in a blog post. The percentage of women in the company's global workforce is 28.6%.

Black and Latino workers are even more poorly represented in management roles, with Black employees making up about 10% of people at various levels of manager and executive. For Latino employees, those numbers range between 3.3% and 5.4%. Two vice presidents — Marc Brown and Kevin Dallas — left the company, in Brown's case last week. So did one of the company's top executives, Peggy Johnson, who departed to become Chief Executive Officer of Magic Leap.

The low level of representation is why Microsoft announced \$150 million in additional funding for its diversity initiative to double the number of Black managers, senior leaders and senior contributors by 2025, changes made in the wake of a focus on racial justice after the death of George Floyd at the hands of police.

The company has said it will expand its leadership development program to more Black employees at lower rungs of its organization in order to prepare them for advancement. It will also strengthen measures to hold vice presidents and general managers accountable when determining compensation and promotions. Microsoft's new programs have provoked scrutiny from the U.S. Labor Department, asking how those efforts comply with laws limiting the consideration of race in employment.

Microsoft also released data on the number of employees who identify as disabled, putting that at 6.1% of its U.S. workforce.

See more: [How Diverse are America's Biggest Companies](#)

(Updates to show why Microsoft increased funding in fourth paragraph.)

To contact the author of this story:

Dina Bass in Seattle at dbass2@bloomberg.net

To contact the editor responsible for this story:

Vlad Savov at vsavov5@bloomberg.net

Shiyin Chen

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[Article 5](#) ([back to top](#))

Article Title: The Office of Federal Contract Compliance Programs (OFCCP) launched a landing page for Executive Order 13950 Combating Race and Sex Stereotyping #BREAKING

News Source: Channel 1 Los Angeles

Reporter's Name: NA

Date: October 21, 2020

Channel 1 Los Angeles

10/21/2020 Washington D.C.

Issued by the President on September 22, 2020. While the order took effect immediately, federal contractors' specific responsibilities under federal contracts entered into beginning November 21, 2020.

The new Executive Order 13950 landing page is a one-stop source for federal contractors, federal subcontractors, and federal employees to learn about the order.

You can find the following items on the new Executive Order 13950 landing page:

1. Executive Order 13950 Frequently Asked Questions – Federal contractors can find answers to questions about the order.
2. Request For Information – OFCCP published a request for information (RFI) seeking information about federal contractors' training, workshops, or similar programming provided to employees. Federal contractors, subcontractors and their employees provide materials in response to the RFI.
3. OFCCP Complaint Hotline to Combat Race and Sex Stereotyping – Employees can file complaints regarding training or activities they believe violate Executive Order 13950 at OFCCPComplaintHotline@dol.gov or 202-343-2008. OFCCP will investigate complaints through its standard complaint procedures, as detailed in the Federal Contract Compliance Manual.

On September 22, 2020, President Trump issued Executive Order 13950, "Combating Race and Sex Stereotyping." This order is the policy of the United States "not to promote race or sex stereotyping or scapegoating" and prohibits federal contractors from discriminating in their employees in workplace diversity and inclusion trainings. More information about the Executive Order is available on the landing page. For questions on the topic.

Consistent with Executive Order 13950, the U.S. Department of Labor published a Request for Information to seek information from federal contractors, federal subcontractors, and employees of federal contractors and subcontractors regarding their training, workshops, or similar programming provided to employees. Specifically, the Request for Information seeks copies of trainings, workshops, or similar programming, as well as information about the duration, frequency, and expense of such activities.

Article 6 ([back to top](#))

Article Title: Labor issues call for data on anti-bias training

News Source: Washington Technology

Reporter's Name: Nick Wakeman

Date: October 21, 2020

Labor issues call for data on anti-bias training

The Labor Department has met its 30-day deadline to put out a call to contractors to submit information on any anti-bias training they provide employees.

The request for information was required by President Trump's executive order to ban certain types of anti-bias and diversity training. The notice is for collecting the information to determine which training violates Executive Order 13950.

The Federal Register notice wants contractors, subcontractors and their employees to provide copies of training materials.

"You may provide various other types of materials such as PowerPoints, photographs, videos, handwritten notes, or printouts," the notice states.

Labor's Office of Federal Contract Compliance Programs is the part of the department that issued the notice.

"OFCCP welcomes all forms of media and data that have in recent years been used, or that may soon be used, in both virtual and in-person trainings, workshops, or similar programming," the office writes in the notice.

Labor is looking for information on training that may promote racial stereotyping and racial scapegoating. They also want to know about the training, frequency and costs.

OFCCP wants to know if complaints have been made about the training and if anyone has been disciplined because of the training.

The notice also says that anyone can use the OFCCP's hotline to confidentially report complaints.

Compliance with the notice is voluntary for contractors and the Labor Department will "exercise its enforcement discretion against Federal contractors and subcontractors that voluntarily submit information and materials."

But if the material is deemed to violate the executive order, the contractor must "promptly" comply or face possible enforcement actions.

The stay of enforcement only applies if an authorized company executive submits the information. If it is an employee, the company makes an independent decision on whether to take an enforcement action. Some of the enforcement actions the government can take include terminations, debarment and suspensions.

Companies have until Dec. 1 to submit their training information to OFCCP.

Article 7 ([back to top](#))

[Article Title: OFCCP Seeks Information About Diversity Training](#)

[News Source: JDSUPRA](#)

[Reporter's Name: Cara Yates Crotty](#)

[Date: October 22, 2020](#)

OFCCP Seeks Information About Diversity Training

[Cara Yates Crotty](#)

[Constangy, Brooks, Smith & Prophete, LLP](#)



CONSTANGY
BROOKS, SMITH &
PROPHETE LLP

Affirmative
Action Alert

Contractors who participate may get a reward.

The Office of Federal Contract Compliance Program issued a Request for Information asking for comments, information from federal contractors and employees relating to workplace training that might violate Executive Order 13950.

As we previously reported, President Trump recently issued Executive Order 13950, Combating Race and Sex Stereotyping, which directed federal contractors from “inculcating” in their employees certain “divisive concepts” that involve race or sex stereotyping. Executive Order directed the OFCCP to post a notice in the *Federal Register* requesting information about contract compliance training. This Request for Information complies with that directive.

The Request for Information asks for information and materials relating to workplace training programs that promote or have been interpreted to promote, stereotyping or scapegoating based on race or sex, as well as the duration, frequency, or cost of such training. Submissions include Power Point shows, photographs, videos, handwritten notes, or printed handouts from training programs “in recent years” or that may be used soon, whether the training is mandatory or voluntary.

The OFCCP also poses five questions:

- Have there been complaints concerning this workplace training? Have you or other employees been disciplined or otherwise questioning this workplace training?
- Who develops your company’s diversity training? Is it developed by individuals from your company, or an outside organization?
- Is diversity training mandatory at your company? If only certain trainings are mandatory, which ones are mandatory and which are optional?
- Approximately what portion of your company’s annual mandatory training relates to diversity?
- Approximately what portion of your company’s annual optional training relates to diversity?

The OFCCP states that the information provided will help the agency design programming and compliance assistance for federal contractors.

Although submission of information by contractors is *entirely voluntary*, the OFCCP offers a carrot for entities coming into compliance with either Executive Order 11246 or Executive Order 13950.

“OFCCP will, consistent with law, exercise its enforcement discretion and not take enforcement action against Federal contractors who voluntarily submit information or materials in response to this request for information, . . . provided that such contractors are in compliance with the Executive Orders as directed by OFCCP. If a Federal contractor . . . who voluntarily submits information in response to this request for information is determined by OFCCP to have non-compliant materials, and the contractor does not correct the issue after compliance assistance is provided, OFCCP may take enforcement action against the contractor if the contractor later receives the contractor [sic] or subcontractor’s materials through a separate source, such as a neutrally scheduled audit, complaint, or if submitted by an employee in response to this RFI.

Significantly, a contractor can take advantage of this “safe harbor” only if information is submitted to the OFCCP by the contractor’s legal representative of the contractor.

The OFCCP reminds contractors and employees that workplace training that “is designed to inform workers, or foster positive perceptions, opinions, or stereotypes that people – regardless of their race or sex – may have regarding people who are prohibited by Executive Orders 11246 or 13950. However, it provides examples of impermissible topics, such as teaching

“concepts like ‘[o]bjective, rational linear thinking,’ ‘[h]ard work’ being ‘the key to success,’ the ‘nuclear family,’ and other values that unite Americans of all races but are instead ‘aspects and assumptions of whiteness.’”

OFCCP Director Craig Leen also held a call with stakeholders to address the Request for Information and to respond to questions raised. He stated that the agency wants as much relevant information as possible to help it develop compliance assistance. OFCCP is hoping for “a significant response.”

Responses are due by December 1. Contractors are encouraged to consult with legal counsel before submitting any determine whether a submission is appropriate and, if so, to ensure that the safe harbor provision can be applied.

Article 8 (back to top)

Article Title: Microsoft's diversity efforts slow after promise to double Black workforce

News Source: Fox Business

Reporter's Name: Morgan Phillips

Date: October 22, 2020

MICROSOFT

Published 56 mins ago

Microsoft's diversity efforts slow after promise to double Black workforce

Black and Hispanic representation at the company rose 0.3 percentage points

By Morgan Phillips FOXBusiness

Microsoft permanent work from home move will be 'outstanding' in the long run, Jack Otter says

FOX Business' Jack Otter on Microsoft allowing employees to work from home permanently and movement out of cities during the COVID-19 pandemic.

Microsoft Corp., which in June pledged to double the number of Black managers and leaders at the company, released a report that showed lackluster increases of Black and Latino representation in its workforce.

Both Black and Hispanic representation at the company rose 0.3 percentage points in 2020 over 2019, to 4.9 percent of the workforce for Black Americans and 6.6 percent for Latinos, according to Microsoft.

Black employees in the U.S. workforce make up less than 3% of managers, directors, partners and executives, according to the report.

Representation of women grew 1.0% to 28.6% of the global workforce and Asian employment grew 1.6% to make up 10.5% of the workforce. Women represent 42% of the company's leadership.

MICROSOFT'S WINDOWS 10 IS BREAKING PCS

In the past year, two Black vice presidents, Marc Brown and Kevin Dallas, have left the company.

In the wake of racial injustice protests, Microsoft announced \$150 million in additional funding for diversity initiatives, including hiring more Black managers and senior leaders by 2025.

The company has said it would expand its leadership development program to reach out to Black lower-level employees for career advancement. But, that plan has raised eyebrows at the U.S. Labor Department.

Both Microsoft and Wells Fargo & Co., which has also pledged to double its ranks of Black leaders, received letters from the Labor Department stating their diversity efforts would comply with laws limiting the consideration of diversity in its employment.

Microsoft's contract with government entities subjects it to certain rules. But the company said Tuesday it is confident

The government's questions for Microsoft focus on whether its program "could constitute unlawful discrimination on t violate Title VII of the Civil Rights Act," Microsoft General Counsel Dev Stahlkopf wrote in a blog post.

[GET FOX BUSINESS ON THE GO BY CLICKING HERE](#)

"We have every confidence that Microsoft's diversity initiative complies fully with all U.S. employment laws. We look OFCCP with this information and, if necessary, defending our approach," Stahlkopf continued.

With Appreciation,

Shenita A. Benjamin

Sr. Executive Assistant

Office of Federal Contract Compliance Programs

U.S. Department of Labor

P: (202) 693-1165

Benjamin.Shenita.A@dol.gov



From: Seely, Christopher - OFCCP [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=6B2B2010AAF743CEB373A758390001A1-SEELY, CHRI]
Sent: 10/22/2020 1:19:05 PM
To: Swirsky, Stephanie - ASP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0c6029e716614ee78e163cbcc8e5e250-Swirsky, St]
CC: Leen, Craig - OFCCP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ffd4a5b3cc74f49a5d2bf4c747416d4-Leen, Craig]; Williams, Tina T - OFCCP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=de1ca1bb58004746a50104bd40a50623-Williams, T]; Davis, Karlyn - ASP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d03793b1358f4852bd59145edb43d230-Davis, Karl]; Dawkins, Laura M - ASP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7d2184500efa4946b40d2aaf82b35fb3-Dawkins, La]; Dankowitz, Beverly - SOL [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d35b44f0957b4cdeb796c97e5990ebcf-Dankowitz,]; Bickerstaffe, Keir - SOL [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=76946342408840629d14d5b8c536a764-Bickerstaff]; Carson, Sarah J - OFCCP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8cfec665af6d40488eacfbfc4015aa81-Carson, Sar]
Subject: PDN Final Rule
Attachments: Resolution Procedures Final Rule (Consolidated OIRA Passback)10.22.20.docx
Importance: High

Hi Stephanie,

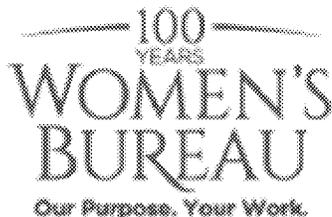
Attached is the PDN Final Rule, responsive to OIRA comments. This version incorporates all the comments from SOL FO, OSEC, and ASP that Craig approved, and it rectifies footnote references.

Please let us know if you have any questions.

Thank you,

Chris Seely
Acting Deputy Director
Division of Policy and Program Development
Office of Federal Contract Compliance Programs
U.S. Department of Labor

(b) 6 (mobile)
Pronouns: he/him/his



From: Seely, Christopher - OFCCP [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=6B2B2010AAF743CEB373A758390001A1-SEELY, CHRI]
Sent: 10/27/2020 11:50:58 AM
To: Leen, Craig - OFCCP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ffd4a5b3cc74f49a5d2bf4c747416d4-Leen, Craig]
CC: Williams, Tina T - OFCCP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=de1ca1bb58004746a50104bd40a50623-Williams, T]; Gean, Lissette - OFCCP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bbb9a13178c24aadb6b7613f2f9041f3-Gean, Lisse]
Subject: FW: PDN Final Rule
Attachments: Resolution Procedures Final Rule.docx

Craig,

Here is version to sign using your PIV card. If you want to set up a call with Michelle Edwards to do the step-by-step, please let me know.

Chris Seely

(b) 6

From: Seely, Christopher - OFCCP
Sent: Tuesday, October 27, 2020 8:18 AM
To: Swirsky, Stephanie - ASP <Swirsky.Stephanie@dol.gov>; Davis, Karlyn - ASP <Davis.Karlyn@dol.gov>
Cc: Carson, Sarah J - OFCCP <Carson.Sarah.J@dol.gov>; Williams, Tina T - OFCCP <Williams.Tina.T@dol.gov>; Dawkins, Laura M - ASP <Dawkins.Laura.M@dol.gov>; Peters, Pamela - ASP <peters.pamela@dol.gov>; Edwards, Michelle - OASP <Edwards.Michelle@dol.gov>
Subject: RE: PDN Final Rule

Attached is the clean version.

Thanks,

Chris Seely

(b) 6

From: Swirsky, Stephanie - ASP <Swirsky.Stephanie@dol.gov>
Sent: Tuesday, October 27, 2020 7:01 AM
To: Seely, Christopher - OFCCP <Seely.Christopher@dol.gov>; Davis, Karlyn - ASP <Davis.Karlyn@dol.gov>
Cc: Carson, Sarah J - OFCCP <Carson.Sarah.J@dol.gov>; Williams, Tina T - OFCCP <Williams.Tina.T@dol.gov>; Dawkins, Laura M - ASP <Dawkins.Laura.M@dol.gov>; Peters, Pamela - ASP <peters.pamela@dol.gov>; Edwards, Michelle - OASP <Edwards.Michelle@dol.gov>
Subject: RE: PDN Final Rule

Sounds good...

Thanks Chris

Stephanie Swirsky
Deputy Assistant Secretary for Policy
U.S. Department of Labor
202/693 (b) 6 (direct)
(b) 6 (mobile)
Swirsky.stephanie@dol.gov

DOL006977

From: Seely, Christopher - OFCCP <Seely.Christopher@dol.gov>
Sent: Tuesday, October 27, 2020 9:55 AM
To: Swirsky, Stephanie - ASP <Swirsky.Stephanie@dol.gov>; Davis, Karlyn - ASP <Davis.Karlyn@dol.gov>
Cc: Carson, Sarah J - OFCCP <Carson.Sarah.J@dol.gov>; Williams, Tina T - OFCCP <Williams.Tina.T@dol.gov>; Dawkins, Laura M - ASP <Dawkins.Laura.M@dol.gov>; Peters, Pamela - ASP <peters.pamela@dol.gov>; Edwards, Michelle - OASP <Edwards.Michelle@dol.gov>
Subject: RE: PDN Final Rule

Doing a final check for spacing, typographical issues.

Chris Seely

(b) 6

From: Swirsky, Stephanie - ASP <Swirsky.Stephanie@dol.gov>
Sent: Tuesday, October 27, 2020 6:54 AM
To: Seely, Christopher - OFCCP <Seely.Christopher@dol.gov>; Davis, Karlyn - ASP <Davis.Karlyn@dol.gov>
Cc: Carson, Sarah J - OFCCP <Carson.Sarah.J@dol.gov>; Williams, Tina T - OFCCP <Williams.Tina.T@dol.gov>; Dawkins, Laura M - ASP <Dawkins.Laura.M@dol.gov>; Peters, Pamela - ASP <peters.pamela@dol.gov>; Edwards, Michelle - OASP <Edwards.Michelle@dol.gov>
Subject: RE: PDN Final Rule

Thanks... we should not be making any additional changes since the OIRA passback... and it does not need to be signed, just a clean final of that version....?

Stephanie Swirsky
Deputy Assistant Secretary for Policy
U.S. Department of Labor
202/693- (b) 6 direct
(b) 6 mobile
Swirsky.stephanie@dol.gov

From: Seely, Christopher - OFCCP <Seely.Christopher@dol.gov>
Sent: Tuesday, October 27, 2020 9:52 AM
To: Swirsky, Stephanie - ASP <Swirsky.Stephanie@dol.gov>; Davis, Karlyn - ASP <Davis.Karlyn@dol.gov>
Cc: Carson, Sarah J - OFCCP <Carson.Sarah.J@dol.gov>; Williams, Tina T - OFCCP <Williams.Tina.T@dol.gov>; Dawkins, Laura M - ASP <Dawkins.Laura.M@dol.gov>; Peters, Pamela - ASP <peters.pamela@dol.gov>; Edwards, Michelle - OASP <Edwards.Michelle@dol.gov>
Subject: RE: PDN Final Rule

Great! Will do. We've been working on it this morning. Should be to you by noon Eastern.

Chris Seely

(b) 6

From: Swirsky, Stephanie - ASP <Swirsky.Stephanie@dol.gov>
Sent: Tuesday, October 27, 2020 6:46 AM
To: Seely, Christopher - OFCCP <Seely.Christopher@dol.gov>; Davis, Karlyn - ASP <Davis.Karlyn@dol.gov>
Cc: Carson, Sarah J - OFCCP <Carson.Sarah.J@dol.gov>; Williams, Tina T - OFCCP <Williams.Tina.T@dol.gov>; Dawkins, Laura M - ASP <Dawkins.Laura.M@dol.gov>; Peters, Pamela - ASP <peters.pamela@dol.gov>; Edwards, Michelle - OASP <Edwards.Michelle@dol.gov>
Subject: RE: PDN Final Rule

OIRA is ready to conclude its review. Please send us the clean final as soon as you can.

thanks

Stephanie Swirsky
Deputy Assistant Secretary for Policy
U.S. Department of Labor
202/693 (b) 6 (direct)
(b) 6 (mobile)
Swirsky.stephanie@dol.gov

From: Seely, Christopher - OFCCP <Seely.Christopher@dol.gov>
Sent: Monday, October 26, 2020 7:18 PM
To: Davis, Karlyn - ASP <Davis.Karlyn@dol.gov>
Cc: Carson, Sarah J - OFCCP <Carson.Sarah.J@dol.gov>; Williams, Tina T - OFCCP <Williams.Tina.T@dol.gov>; Swirsky, Stephanie - ASP <Swirsky.Stephanie@dol.gov>; Dawkins, Laura M - ASP <Dawkins.Laura.M@dol.gov>; Peters, Pamela - ASP <peters.pamela@dol.gov>; Edwards, Michelle - OASP <Edwards.Michelle@dol.gov>
Subject: RE: PDN Final Rule

Okay, will do.

Thanks,

Chris Seely

(b) 6

From: Davis, Karlyn - ASP <Davis.Karlyn@dol.gov>
Sent: Monday, October 26, 2020 4:15 PM
To: Seely, Christopher - OFCCP <Seely.Christopher@dol.gov>
Cc: Carson, Sarah J - OFCCP <Carson.Sarah.J@dol.gov>; Williams, Tina T - OFCCP <Williams.Tina.T@dol.gov>; Swirsky, Stephanie - ASP <Swirsky.Stephanie@dol.gov>; Dawkins, Laura M - ASP <Dawkins.Laura.M@dol.gov>; Peters, Pamela - ASP <peters.pamela@dol.gov>; Edwards, Michelle - OASP <Edwards.Michelle@dol.gov>
Subject: PDN Final Rule

Chris:

Please send a clean final version of the attached first thing in the morning. OIRA is set to conclude and we need to ROCIS this final clean version. I will be out from 8:45am-Noon or so tomorrow morning so please make sure you send this to Stephanie and reply all.

Thanks
Karlyn

From: Kilberg, Andrew G - OSEC </O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS /CN=285BFB7C58734E858F9CBD77C1BCF3C7-KILBERG, AN>
To: Nicholson, Mattie L - OPA; Leen, Craig - OFCCP; Swearingen, Brett A - OSEC; Squitieri, Chad C - OSEC; OScannlain, Kate S - SOL; Taylor, Timothy J - SOL
CC: Sweeney, Megan P - OPA; Sidney, Sabin R - OPA; Mondl, Rachel E - OSEC
Sent: 10/29/2020 1:34:53 PM
Subject: RE: RAPID RESPONSE: Press Inquiry 29
Attachments: 2020-10-29 NUL v. Trump - Complaint - FINAL.pdf

Adding Rachel

Andrew G. I. Kilberg
Counselor to the Secretary
U.S. Department of Labor
202.693.6018

From: Kilberg, Andrew G - OSEC
Sent: Thursday, October 29, 2020 1:33 PM
To: Nicholson, Mattie L - OPA <Nicholson.Mattie.L@dol.gov>; Leen, Craig - OFCCP <Leen.Craig@dol.gov>; Swearingen, Brett A - OSEC <swearingen.brett.a@dol.gov>; Squitieri, Chad C - OSEC <squitieri.chad.c@dol.gov>; OScannlain, Kate S - SOL <OScannlain.Kate.S@dol.gov>; Taylor, Timothy J - SOL <Taylor.Timothy.J@dol.gov>
Cc: Sweeney, Megan P - OPA <Sweeney.Megan.P@dol.gov>; Sidney, Sabin R - OPA <Sidney.Sabin.R@dol.gov>
Subject: RE: RAPID RESPONSE: Press Inquiry 29

Here's a draft response for consideration. Because this relates to a new lawsuit, SOL definitely needs to approve.

(b) 5

Andrew G. I. Kilberg
Counselor to the Secretary
U.S. Department of Labor
202. **b(6)**

From: Nicholson, Mattie L - OPA **b(6)** <@dol.gov>
Sent: Thursday, October 29, 2020 1:23 PM
To: Leen, Craig - OFCCP <Leen.Craig@DOL.gov>; 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>; OScannlain, Kate S - SOL <OScannlain.Kate.S@dol.gov>; Taylor, Timothy J - SOL <Taylor.Timothy.J@dol.gov>
Cc: Sweeney, Megan P - OPA <Sweeney.Megan.P@DOL.gov>; Sidney, Sabin R - OPA <Sidney.Sabin.R@dol.gov>
Subject: RAPID RESPONSE: Press Inquiry 29

All – Please see the below inquiry

Outlet: Washington Post
Reporter: Eli Rosenberg

Inquiry:

We are going to update the story with news of this lawsuit from the National Urban League and the National Fair Housing Alliance, against the Trump admin and DOL for the EO.

The complaint is attached. Let me know if you'd have any comment.

--
Mattie Nicholson

From: Rosenberg, Eli <[REDACTED]@washpost.com>
Sent: Thursday, October 29, 2020 1:18 PM
To: Nicholson, Mattie L - OPA <Nicholson.Mattie.L@dol.gov>
Cc: Sweeney, Megan P - OPA <Sweeney.Megan.P@DOL.gov>; Sidney, Sabin R - OPA <Sidney.Sabin.R@dol.gov>
Subject: Re: hi from the Washington Post

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.

We are going to update the story with news of this lawsuit from the National Urban League and the National Fair Housing Alliance, against the Trump admin and DOL for the EO.

The complaint is attached. Let me know if you'd have any comment.

The Washington Post
m: (510) [REDACTED]
d: (202) [REDACTED]
emrosenberg

From: Nicholson, Mattie L - OPA <Nicholson.Mattie.L@dol.gov>
Sent: Tuesday, October 27, 2020 12:29 PM
To: Rosenberg, Eli <[REDACTED]@washpost.com>
Cc: Sweeney, Megan P - OPA <Sweeney.Megan.P@DOL.gov>; Sidney, Sabin R - OPA <Sidney.Sabin.R@dol.gov>
Subject: RE: hi from the Washington Post

Eli,

On background, attributable to a DOL Spokesperson:

The allegations you have described are nonsense. The Department of Labor is 100% committed to OFCCP's mission of ensuring equal employment opportunity among federal contractors. Race and sex stereotyping and scapegoating are discriminatory and harmful. Our country's long efforts to eradicate racial discrimination are stunted, not furthered, when employers promote race and sex stereotyping and scapegoating. By prohibiting race and sex stereotyping and scapegoating in federal contractors' training, Executive Order 13950 furthers OFCCP's mission and is entirely consistent with Executive Order 11246. Both Secretary Scalia and Director Leen have made it clear that EO 13950 does not prohibit run-of-the-mill implicit-bias training. But it does prohibit the types of egregious training cited in EO 13950. For example, no reasonable observer would say that it is acceptable for a federal contractor to teach its employees that "rational linear thinking" and "hard work" are "aspects" of one race, but not another.

From: Rosenberg, Eli <[REDACTED]@washpost.com>
Sent: Tuesday, October 27, 2020 11:25 AM
To: Sidney, Sabin R - OPA <Sidney.Sabin.R@dol.gov>
Cc: Nicholson, Mattie L - OPA <Nicholson.Mattie.L@dol.gov>; Sweeney, Megan P - OPA <Sweeney.Megan.P@DOL.gov>
Subject: Re: hi from the Washington Post

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.

Hi,

We are planning to publish the story tomorrow morning. One follow up inquiry:

Does the DOL have any response to critics who say the EO and the OFCCP's efforts at implementation are "part of a larger strategy by this administration to foster fear," and chill momentum for advancing racial equity? Who say that the new EO and OFCCP's efforts are "an affront to the purpose and history of Executive Order 11246," and an overreach of its duties? That the new EO is based on shaky legal precepts?

Deadline is the end of the day. Let me know if you have any questions:

b(6)

Thank you,
Eli Rosenberg

The Washington Post

m: (510)

d: (202)

b(6)

emrosenberg@gcc02.safelinks.protection.outlook.com

From: Sidney, Sabin R - OPA <Sidney.Sabin.R@dol.gov>

Sent: Friday, October 23, 2020 11:27 AM

To: Rosenberg, Eli <[b\(6\)@washpost.com](mailto:b(6)@washpost.com)>

Cc: Nicholson, Mattie L - OPA <Nicholson.Mattie.L@dol.gov>; Sweeney, Megan P - OPA <Sweeney.Megan.P@DOL.gov>

Subject: Re: hi from the Washington Post

CAUTION: EXTERNAL SENDER

Eli-

Background, attributable to a DOL Spokesperson:

OFCCP has received 98 inquiries, 81 of which are complaints.

OFCCP has never set up a hotline tied to an Executive Order.

DOL007061

**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=rBXRdWflV7M>.

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 “includat[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

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

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Subject: Thursday Morning Press Releases/Daily News Clippings: October 29, 2020

Thursday Morning Press Releases: October 29, 2020- None to Report

DOL007123

Date of Press Release	Company Name	Hyperlink to Release

Thursday Morning News Clips: October 29, 2020

Article #	Paper	Title
1	Bloomberg Law	Separate Adverse Act Not Needed for ADA Accommodation Claim (2)
2	Lexology	OFCCP Invites Federal Contractors and Employees to Submit Materials and Information about Workplace Diversity Training Initiatives
3	Employment Screening Resources Check	OFCCP and Federal Technology Contractors Resolve Alleged Pay Discrimination
4	The Washington Post	Trump's crackdown on training about white privilege draws broad opposition
5	Bloomberg Law	Employers Get Leeway in Late Appeals of OSHA Worker-Safety Cases

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

Article Title: [Separate Adverse Act Not Needed for ADA Accommodation Claim \(2\)](#)

News Source: Bloomberg Law

Reporter's Name: Patrick Dorrian, Robert Iafolla

Date: October 28, 2020

[Daily Labor Report](#)®



Three leather bound chairs sit behind a wooden bench in a courtroom.
 Photographer: Andrew Harrer/Bloomberg

Separate Adverse Act Not Needed for ADA Accommodation Claim (2)

By [Patrick Dorrian](#) and [Robert Lafolla](#)

Oct. 28, 2020, 2:43 PM; Updated: Oct. 28, 2020, 8:02 PM

- Proof accommodation needed, not employer hardship is enough
- Evidence of firing, demotion, loss of pay, not needed under ADA

A disabled Colorado county health inspector was held to an unfair standard at her failure-to-accommodate trial when the bias resulted in a separate adverse employment action, the Tenth Circuit ruled in a 7-6 vote on Wednesday.

At issue before the full U.S. Court of Appeals for the Tenth Circuit was the broad question of whether a Weld County, Colorado, health inspector who denied a job accommodation for a disability must show more than just a refusal by her employer to make requested changes to her work, in order to prove a violation of the Americans with Disabilities Act's reasonable job accommodation requirements.

The ruling that a worker can bring a failure-to-accommodate claim absent a separate adverse employment action will increase ADA cases because most workers bring those cases after they're fired, some legal scholars said.

But by overturning an [earlier ruling](#) by a three-judge panel, the Denver-based Tenth Circuit avoided endorsing a view of the ADA's requirement for adverse employment actions with other rules surrounding an employer's duty to reasonably accommodate. [Porter](#), a University of Toledo law professor.

The earlier panel ruling obscured key issues in accommodation claims, such as whether the worker's request was reasonable, said [Porter](#), who has written extensively about disability bias issues, including the [Tenth Circuit's initial decision](#).

Most courts have ruled that the separate adverse employment actions aren't necessary, [Porter](#) said. The lack of a clear precedent makes it unlikely that the U.S. Supreme Court would agree to review it, she said.

Still, the case presents a narrow, purely legal issue and would give the high court a chance to overturn a plaintiff-friendly ruling by the court's conservative majority to take it up, said Michael Selmi, a professor at Arizona State University who has written about disability discrimination.

Weld County is reviewing the decision and considering its options, county spokeswoman Jennifer Finch said.

The plaintiff's attorney, Jason Wesoky of Darling Milligan, said the ruling hewed to the meaning of the ADA's reasonable accommodation requirement. The decision brings Laurie Exby-Stolley one step closer to winning her case, he said.

"We hope that Weld County sees that its nearly decade-long effort to discriminate against Ms. Exby-Stolley and deny her a job is over. If they continue to pursue this matter, we will do whatever is necessary to obtain full justice for Ms. Exby-Stolley," Wesoky said.

Adverse Employment Action

Exby-Stolley filed an ADA suit after she was denied a job accommodation by Weld County for her right-arm limitation. She rejected findings by a federal judge in Colorado that she also needed to prove she experienced an “adverse” job decision, demotion, or other action that negatively affected the terms or conditions of her employment.

Exby-Stolley is therefore entitled to a new trial, Judge Jerome A. Holmes said for the majority.

The phrase “adverse employment action” isn’t included in the text of the ADA accommodation provisions, Holmes said. He effectively read an additional requirement into the law, he said.

That approach is “squarely at odds with” Tenth Circuit precedent, the Equal Employment Opportunity Commission’s interpretation of an ADA failure-to-accommodate claim, and the “regularly followed practices” in other circuits, Holmes said.

No other federal appeals court “has regularly incorporated an adverse-employment-action requirement into an ADA failure-to-accommodate claim,” he said.

Reading an adverse action requirement into the ADA accommodation claims also conflicts with the inherent nature of ADA disparate-treatment claims, as well as the ADA’s broad remedial purposes, Holmes said.

Judges Mary Beck Briscoe, Carlos F. Lucero, Scott M. Matheson Jr., Robert E. Bacharach, Gregory A. Phillips, and Nathaniel S. Johnson joined the majority opinion.

Agencies Support Worker

Exby-Stolley had the backing of the EEOC and the Department of Justice on appeal. Employer decisions other than demotions and firing actions that have been traditionally considered adverse under federal law can also discriminate in “the terms, conditions, or other aspects of employment,” the agency and department said in a [joint brief](#).

Denying a qualified disabled worker reasonable assistance to do her job is the type of employer decision that necessarily causes undue hardship, regardless of any separate adverse act, they said.

The county argued the trial court properly told the jury Exby-Stolley had to prove she was fired or suffered a similar adverse action. She alleged failure to accommodate her disability-based inability to perform inspections as quickly as her job required. The Tenth, Eighth, Ninth, and District of Columbia circuits had all previously held a disabled worker allegedly denied a reasonable accommodation. To make that additional showing, the county said.

Dissent

Judge Carolyn B. McHugh wrote the primary dissent. The majority’s reading of the law ignores the ADA’s “in-regard-to” clause.

An employer doesn’t violate the ADA unless it discriminates against a qualified worker with a disability “in regard to” hiring, advancement, or discharge of employees, employee compensation, job training, [or] other terms, conditions, or benefits,” McHugh said.

An employee asserting a failure-to-accommodate claim therefore must logically provide evidence of “something more than a need for job assistance to meet the in-regard-to clause, she said.

Ignoring that language doesn’t give the required consideration to all of the words used by Congress, McHugh said.

The majority also acknowledges that rulings on the issue by other circuits “do not all point in the same direction,” the court said.

Judges Timothy M. Tymkovich, Paul J. Kelly Jr., Allison H. Eid, and Joel M. Carson joined the dissent.

Judge Harris L. Hartz wrote a separate dissent, which Tymkovich joined. He raised a “minor difference” with the lead and other observations.”

Darling Milligan PC represented Exby-Stolley. Hall & Evans LLC represented the county’s board of commissioners.

The case is Exby-Stolley v. Bd. of Cty. Comm’rs, 10th Cir., No. 16-01412, en banc 10/28/20.

(Updated to add comment from plaintiff’s lawyer.)

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

Article Title: [OFCCP Invites Federal Contractors and Employees to Submit Materials and Information about Workplace Diversity Initiatives](#)

News Source: Lexology

Reporter’s Name: Jonathan D. Rosenfeld, Laura E. Schneider, Debo P. Adegbile, Barry J. Hurewitz, Danielle Y. Conlon, Michael J. Lenzi

Date: October 28, 2020

OFCCP Invites Federal Contractors and Employees to Submit Materials and Information about Workplace Diversity Initiatives

Wilmer Cutler Pickering Hale and Dorr LLP



USA October 28 2020

On October 22, 2020, the U.S. Department of Labor’s Office of Federal Contract Compliance Programs (OFCCP) published [Information](#) (RFI) in the Federal Register seeking information about any workplace diversity trainings federal contractors and subcontractors provide that involve race or sex stereotyping or scapegoating. The RFI asks federal contractors, subcontractors, and their employees to submit copies of any trainings, workshops, or similar programming that “promote, or could be reasonably interpreted to promote, race or sex stereotyping or scapegoating, as well as information about the duration, frequency, and expense of such trainings.

The RFI was directed by Executive Order 13950 on [Combating Race and Sex Stereotyping](#), signed by President Trump, which prohibits federal contractors from conducting workplace diversity training that promotes “anti-American” race or sex stereotyping or scapegoating. This Executive Order, summarized in WilmerHale’s previous Client Alert available [here](#), has been widely criticized by a coalition of industry associations for restricting existing diversity, equity, and inclusion training programs and interfering with efforts to combat systemic racism. These industry groups have already drafted a [letter](#) urging the Trump administration to rescind the Order, and are expected to sue to prevent the Order from taking further effect on November 21, 2020. (If the administration loses in the presidential election, it is widely expected that the Order will be withdrawn in January 2021). In the meantime, however,

remains in effect, the RFI will, according to the OFCCP, help the agency “obtain information to formulate OFCCP pro assistance” and enable it to “better combat race and sex stereotyping within the contractor community.”

The RFI encourages federal contractors, subcontractors and their employees to provide information or materials concerning prohibited stereotyping or scapegoating, and seeks information about whether there have been complaints about employees have been disciplined for complaining about the trainings. The OFCCP will permit anonymous submissions. RFI also reminds the public about the e-mail and telephone hotline the OFCCP has created to report potentially non-compliant materials, and encourages members of the public to report “potentially unlawful training materials.”

In addition, the RFI provides federal contractors and subcontractors with an opportunity to voluntarily submit information about trainings to the OFCCP to seek compliance assistance. For those contractors and subcontractors that voluntarily submit information, owner, executive, or legal representative with actual authority to bind the entity, the OFCCP has pledged to exercise its discretion not to take enforcement action if the submitted materials are found to violate Executive Order 13950 or Executive Order 13950 (prohibiting contractors from discriminating against employees on the basis of race, sex, and certain other protected classifications) if the contractor thereafter promptly comes into compliance with the Executive Orders. This safe harbor applies even if an employee has submitted substantially similar materials to the OFCCP or filed a complaint based on such materials.

Federal contractors or subcontractors that wish to submit training materials to the OFCCP for compliance review and request of enforcement forbearance are instructed to do so on or before December 1, 2020. Contractors and subcontractors may submit materials to the OFCCP through the Federal eRulemaking portal at www.regulations.gov or via mail.

Finally, the RFI provides some helpful direction for contractors and subcontractors assessing what types of unconscious bias might be found impermissible under Executive Order 13950:

Please note that training is not prohibited if it is designed to inform workers, or foster discussion, about pre-conception unconscious bias—regardless of their race or sex—may have regarding people who are different, which could influence a worker's behavior as perceived by others as offensive.

This clarification appears to create space for permissible trainings about unconscious bias under Executive Order 13950 regarding the unconscious biases that *all people* may have regarding anyone who is different from them, as opposed to programs where specific groups are prone to exhibit certain biases.

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Article Title: [OFCCP and Federal Technology Contractors Resolve Alleged Pay Discrimination](#)

News Source: [Employment Screening Resources Check](#)

Reporter's Name: [Thomas Ahearn](#)

Date: [October 28, 2020](#)

OFCCP and Federal Technology Contractors Resolve Alleged Pay Discrimination

Written By [ESR News Blog Editor Thomas Ahearn](#)

The [Office of Federal Contract Compliance Programs \(OFCCP\)](#) – which is part of the U.S. Department of Labor (DOL) – has reached settlements with two California-based federal technology contractors to resolve allegations of systemic pay discrimination against employees in several states. While not admitting liability, the contractors agreed to pay \$1,450,000 in back pay and interest. [Read the full news release.](#)

The OFCCP found disparities in compensation between male and female employees working in similar positions at Hewlett Packard Enterprise (HPE). Both HPI and HPE agreed to provide relief to affected female employees, conduct audits, and take steps to ensure its personnel practices – including record-keeping and internal auditing procedures – meet legal requirements.

“The U.S. Department of Labor acknowledges these federal contractors’ voluntary involvement in resolving and addressing the issues we identified,” said OFCCP Pacific Regional Director Jane Suhr. “OFCCP procedures offer federal contractors effective ways to pay to employees, enhance internal salary equity reviews and proactively resolve any disparities uncovered as quickly as possible.”

In addition to [Executive Order 11246](#), the OFCCP enforces [Section 503 of the Rehabilitation Act of 1973](#) and the [Vietnam Readjustment Assistance Act of 1974](#). These laws make it illegal for contractors and subcontractors doing business with the federal government to discriminate in employment because of race, color, religion, sex, sexual orientation, gender identity, national origin, disability, or status as a veteran.

In addition, contractors and subcontractors are prohibited from discriminating against applicants or employees because of race, color, religion, sex, sexual orientation, gender identity, national origin, disability, or status as a veteran, as discussed, or disclosed their compensation or the compensation of others subject to certain limitations, and may not retaliate against employees for engaging in protected activities. For more information about the OFCCP, call toll-free 800-397-6251 or visit [www.ofccp.gov](#).

According to the [National Committee on Pay Equity \(NCPE\)](#), the gender wage gap between men and women has narrowed to one penny per year in the United States since Congress passed [The Equal Pay Act of 1963](#). In 2015, [statistics from the U.S. Bureau of Economic Analysis](#) showed that women earned 80 percent of what men earned. As a result, [laws prohibiting inquiries about salary history have increased](#) the gender wage gap.

As of September 2020, [salary history question bans](#) exist in many major American cities. In addition, Alabama, California, Hawaii, Illinois, Maine, Maryland, Massachusetts, Michigan, New Jersey, New York, North Carolina, Oregon, Pennsylvania, Washington, and Wisconsin have passed statewide laws. [HRDive](#) keeps a list of [states and localities that have salary history question bans](#).

Several businesses have settled [equal pay discrimination lawsuits](#) filed by the U.S. Equal Employment Opportunity Commission for thousands of dollars. This growing trend will cause more employers to focus on [salary history question bans](#) that promote pay equity for women, according to the [“ESR Top Ten Background Check Trends”](#) for 2020 compiled by [Employment Screening Resources® \(ESR\)](#).

“When an employer has a background screening firm perform past employment verifications, it is critical that firm know the state prohibits salary history questions, or else that employer could be fined,” explained background check expert [Attorney Jena McGregor](#) and chief executive officer (CEO) of [Employment Screening Resources® \(ESR\)](#) and the author of [‘The Safe Hiring Manual’](#).

[Employment Screening Resources® \(ESR\)](#) – a leading global background check provider – offers employers flexible and customizable [background verifications](#) that provide the salary history of applicants only if permitted by state and local equal pay laws. ESR’s solutions give our clients the flexibility to customize their verifications through unique business rules. To learn more about ESR, visit [www.esr.com](#).

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Article 4 ([back to top](#))

Article Title: [Trump’s crackdown on training about white privilege draws broad opposition](#)

News Source: [The Washington Post](#)

Reporter’s Name: [Jena McGregor](#), [Eli Rosenberg](#)

Date: [October 29, 2020](#)

Trump's crackdown on training about white privilege opposition



President Trump speaks at a campaign rally in Lansing, Mich., on Tuesday. (Jonathan Ernst/Reuters)

By Jena McGregor and

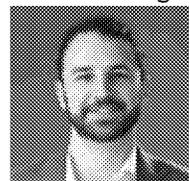


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October 29 at 9:05 AM

The Trump administration has united a surprisingly broad swath of American business groups, nonprofits and civil rights organizations in opposition to an executive order that prohibits federal contractors and other entities from using “blame-focused” diversity training based on race or sex.

The Sept. 22 executive order has met pushback from groups across the political spectrum, including the U.S. Chamber of Commerce, the American Civil Liberties Union, the National Council on Legal Defense and Educational Fund. The order bars the use of “divisive concepts,” including the idea that the United States is “racist, sexist, or oppressive, whether consciously or unconsciously” or that an individual, “by virtue of his or her race or sex, is inherently racist, sexist, or oppressive, whether consciously or unconsciously.” Three of the four examples in the order describe training that references White people, White males or Whiteness. Recent U.S. Department of Labor letters that questioned two companies about their stated goals to increase minority representation and the recent Lives Matter protests this summer have also caused alarm.

Associations representing American hospitals, physicians and nurses said the order “would effectively reverse decades of progress in reducing racial inequality” and called for it to be rescinded. The Business Roundtable joined the Chamber and other groups, saying the order “has a broadly chilling effect on legitimate and valuable” training.

The Pharmaceutical Research and Manufacturers of America, American Association of Advertising Agencies, HR Policy Association and other business groups have also denounced the order, as have the American Civil Liberties Union and the National Council on Legal Defense and Educational Fund, which worked with the Chamber to produce a joint letter.

“I’ve never seen this type of response, in the form of letters, that have put the contractor community and progressive groups on edge,” said Chris Wilkinson, senior counsel with the law firm Perkins Coie and a former associate solicitor for the U.S. Department of Labor.

[A two-page White House ‘race’ memo became a flash point in Tuesday’s debate]

Few federal contracting companies have spoken out individually against the executive order, which also applies to executive agencies and recipients of federal grants, in the heated political environment leading up to the election, relying instead on trade associations and rules.

The Information Technology Industry Council, a software and technology industry group that includes Apple, Samsung and others, sent a letter earlier this month with 10 other groups warning that the order raises concerns about businesses’ First Amendment rights. (Amazon.com, which Bezos owns The Washington Post.)

“The federal government should not be in the business of dictating to companies how to talk to their employees about race and diversity,” the ITI’s president said. “The government should certainly not be dissuading employees from endeavoring to address issues of systemic racism and racial discrimination.”

For companies that contract with the federal government, enforcement of the new order will fall mostly to the Department of Labor’s Federal Contract Compliance Programs (OFCCP), which ensures that federal contractors are not discriminating against employees on the basis of race, sex and other issues.

Some current and former labor officials and industry experts suggested the normally staid contracting office was being used as a political ploy. The new mandate, some said, is confusing in part because discriminating on the basis of race and sex is prohibited for federal contractors for decades by an order signed by President Lyndon B. Johnson in 1965, Executive Order 11246. “It’s sort of a bizarre overreach,” said Lawrence Z. Lorber, who headed the office for a period during the 1970s under President Jimmy Carter. “The OFCCP was traditionally nonpartisan. ‘Executive orders tend to be political documents, in some respect.’”

Others saw the order as an effort to stall progress for racial equity movements.

“I do think these two efforts are part of a larger strategy by this administration to foster fear regarding employer efforts to address diversity,” said Jenny Yang, who led the U.S. Equal Employment Opportunity Commission under President Barack Obama.

Ellen Shong Bergman, who led the office in the early 1980s during the Reagan administration, disagreed, saying that training and hiring on the basis of race are “precisely the kind of things the agency has been worried about for all of its enforcement history.” “The complaint system and the compliance review system are concerned with both intentional discrimination and unintentional discrimination, regardless of motivation,” she said.

The Department of Labor disputed the criticism.

“The Department of Labor is 100 percent committed to OFCCP’s mission of ensuring equal employment opportunity and is not being politicized,” said in a statement. “Race and sex stereotyping and scapegoating are discriminatory and harmful.”

The contracting office has taken other steps in the wake of the order.

The office sent letters to two high-profile companies — Microsoft and Wells Fargo — seeming to warn them over pledged diversity goals for this summer to increase the diversity of their leadership ranks.

Setting aspirational diversity goals is completely legal, said Yang, noting that federal contractors already have an obligation to do so because of the Johnson order. (In a blog post, Microsoft General Counsel Dev Stahlkopf said, “We have every confidence that our diversity initiative complies fully with all U.S. employment laws.” Wells Fargo said through a spokesman that it was committed to becoming a “more diverse and inclusive company” were lawful.)

The OFCCP has also set up a hotline for employees to report incidents of “race and sex stereotyping,” as well as other forms of discrimination. The hotline has received 81 complaints thus far, officials said. The DOL also published a “request for information” in the Federal Register seeking more information from the public or contractors about workplace trainings on diversity.

The order is due to go into effect in late November, raising questions about how much weight it will have should form the election.

Howard Ross, a diversity consultant whose firm produced a seminar that was cited in the executive order, had spoken to why throw yourself on a sword and make a big kerfuffle of this if you can put this off for a couple of weeks,” he said. “If Trump loses the election this could all go away.”

[White House directs federal agencies to cancel race-related training sessions it calls ‘un-American propaganda’]

Still, diversity and legal experts say the order is having an effect.

“That fear is out there, and it’s changing behavior even without specific letters or contacts from the Trump administration,” said Luse, senior counsel for the NAACP’s LDF, who said her organization is “currently examining all of our possible legal options.” During a town hall last week, Craig Leen, the director of the Office of Federal Contract Compliance Programs, tried to get more than 300 government contractors and trade groups in attendance.

Leen acknowledged the letters, saying that “we understand that there is angst,” and emphasized companies shouldn’t be putting their inclusion efforts on hold. He clarified that “unconscious bias” training was allowed as long as it’s not directed at a particular company to assuage companies’ concerns about being barred from lucrative federal contracts by saying violators would have the opportunity to be first.

And he pointed participants to recent remarks from Labor Secretary Eugene Scalia saying that the order “does not prohibit non-discrimination and equal opportunity.”

“What you heard on the call was reassurance,” said David Cohen, one of the co-founders of the Institute for Workplace Inclusion, at the town hall. “I think the administration didn’t realize the amount of backlash they were going to get from the business community.” But Leen also suggested that “white privilege” or “white fragility” training for employees of federal contractors would be a problem. An executive office memorandum to federal department and agency heads from Sept. 28 had suggested “white privilege,” “systemic racism” or “intersectionality,” could also be red flags for prohibited training.)

“That’s not appropriate in a work environment — to tell employees who are a captive audience, who may disagree with themselves — that they are privileged in that way,” Leen said in the town hall. “That is treating them differently because of their race.” The Washington Post emailed nearly 30 companies, including federal contractors IBM, AT&T, Google and General Electric. It received inquiries from the Department of Labor like those sent to Microsoft and Wells Fargo.

None of those who responded said they had been contacted or offered executives to speak about any changes being made by the order.

Some former Department of Labor officials said they believed the department’s attempt to crack down on certain diversity training was in the spirit of the original executive order.

“The Department of Labor’s attempt to undermine the contractual obligations of federal contractors to engage in non-discriminatory hiring practices to examine their personnel data to ensure there’s no discrimination among its employees is an affront to the purpose and history of the OFCCP,” said Patricia A. Shiu, director of the OFCCP from 2009-2016, during Obama’s presidency.

The Department of Labor declined to disclose whether it had sent similar letters to other companies.

“OFCCP will send letters to other contractors where it determines a similar inquiry is necessary to confirm that discriminatory hiring preferences or quotas are not being used,” the department said in a statement.

White House spokesman Judd Deere said Trump’s executive order was an “important action to ensure that all Americans are granted equal opportunity to prosper and succeed in the workplace.”

Some private companies are already taking action.

Dawn Siler-Nixon, a partner with the law firm Ford Harrison, said some of her clients have removed phrases such as “diversity training.” She said one client, a manufacturer who is a federal contractor, had canceled a book discussion for employees by Robin DiAngelo.

Others said companies were taking a “wait-and-see” approach until after the election.

Lisa Beasley and Brynne Hovde, co-founders of the diversity training firm Nova Collective, said only one client, a federal contractor, had canceled some of their other human resources contacts have reported an uptick in anonymous feedback from employees who say they are “supporting a liberal agenda.” The order is “fanning the flames,” Hovde said.

Yet for federal contractors, there are still plenty of concerns about the reach and ambiguity of the order.

Craig Albright, vice president for legislative strategy for BSA: The Software Alliance, which represents major software companies, asked during the town hall whether he knew what the following phrase from the executive order’s list of “divisive concepts” meant: “divisive concepts” or sex cannot and should not attempt to treat others without respect to race or sex.”

Albright said that while the call was helpful, his organization still has questions. “I think a lot of companies are operating. It’s notable “when you see such a broad range of industries all coming out relatively quickly on something. It demonstrates concern.”

Article 5 ([back to top](#))

Article Title: [Employers Get Leeway in Late Appeals of OSHA Worker-Safety Cases](#)

News Source: Bloomberg Law

Reporter’s Name: Bruce Rolfsen

Date: October 29, 2020

[Daily Labor Report](#)@



Slow mail service has led OSHA to use other ways of contacting employers that are issued workplace-safety citations
Photographer: David Paul Morris/Bloomberg

Employers Get Leeway in Late Appeals of OSHA Worker-Safety Cases

By [Bruce Rolfsen](#)

Oct. 29, 2020, 5:45 AM

- 11th, 5th Circuits call for companies to get second look
- Recent trend could be more relevant amid pandemic

Employers have gotten a reprieve in three recent cases in which they missed a 15-day statutory deadline to challenge a trend that could have greater impact because of the pandemic.

The second chance for late appeals of allegations that employers endangered workers — two-and-a-half years late, in some businesses and the U.S. Occupational Safety and Health Administration face notification difficulties brought on by virus-related slow mail delivery and offices that are closed or thinly staffed.

The Occupational Safety and Health Review Commission, which hears appeals of OSHA citations, is now giving a second chance involving employers that failed to meet the deadline. A third case that raised the issue recently settled.

The shift to decide the appeal based on the merits of the case and not deadline-related processing reflects a pair of recent decisions that kicked late appeals back to the review commission, according to Gary Visscher, a lawyer who served on OSHRC in 1990 and is now counsel with the Law Office of Adele L. Abrams P.C. in Beltsville, Md.

But OSHA and the review commission may have to make additional allowances for slow responses that can be attributed to the attorney Anthony Tilton, a partner with Cotney Construction Law L.L.P. in Tallahassee, Fla., who successfully represented the employer in the case.

Employers should record when citation documents are received and when their appeal is sent to OSHA because delays in processing or employees working away from an office may be justifiable, he said.

“Those are all elements of excusable neglect,” Tilton added.

Recent Decisions

The 1970 law that created OSHA gives employers 15 working days after receiving a citation by certified mail to file a response.

A spokesperson for the Labor Department, which oversees OSHA, said the agency’s notification policies haven’t changed, but that the only official way to notify employers.

However, when virus issues could lead to situations such as closed offices, the agency has used additional contact methods such as email, and hand-delivery, the spokesperson added. Employers are encouraged to discuss settlement options with OSHA before contesting alleged violations.

This summer, the review commission approved the rehearing of one case, *Secretary of Labor v. Arch-Tech Construction*, related to the shutdown of a courthouse in March and miscommunication between the business owner and DOL attorneys had occurred. OSHA had dropped the citations or legal actions were on hold.

And earlier this month, PetSmart Inc. got a second chance in an appeal filed two-and-a-half years after the citation was issued for a store in Vero Beach, Fla., store in October 2017.

The review commission Administrative Law Judge Sharon Calhoun had rejected PetSmart’s late appeal in an Aug. 24 decision that hadn’t “provided the Court evidence regarding any good faith efforts to timely contest.”

But all three review commission members in an Oct. 13 remand order vacated Calhoun’s decision and sent the appeal back to OSHA.

In *PetSmart v. Secretary of Labor*, the retailer said its Phoenix-based managers weren’t aware of the 2017 Vero Beach citation until the agency contacted corporate headquarters earlier this year.

OSHA should have sent the citation and penalty notice to PetSmart’s Phoenix office, the company said in its appeal. The company’s safety manager in 2017 had requested OSHA refer all questions to company headquarters.

PetSmart’s attorneys declined to discuss the ongoing case.

'Forced' Second Look

It's not clear if other late-appeal cases are being contested at the review commission. Since mid-March, the commission has been closed to public inspection of case filings.

The review commission in recent months has rejected at least two appeals on the grounds that the employer's reasons for the hearing.

One of the rejections, involving a contractor in Council Bluffs, Iowa, was appealed to the U.S. Court of Appeals for the Fifth Circuit. The court has yet to issue a decision in *Reiber Contracting Inc v. Secretary of Labor*.

Tilton, the Florida lawyer, cautioned that the greater leeway courts are showing shouldn't be seen as a green light for late filings. He said that citations were ignored.

"This is not a get out of jail card," Tilton said.

Visscher, the former review commission member, pointed to two appeals court cases decided in the past year that are part of the trend—*Coleman Hammons Construction Company Inc. v OSHRC* and *Randall Mechanical Inc. v. Secretary of Labor*.

"I think what happened was that the current commission was forced to take a look by courts of appeals decisions," he said.

Both cases involved whether the chain of events leading to late filings could be considered "excusable neglect," as defined by the court, and deserved full hearings.

The high court's 1993 decision in *Pioneer Investment Services Co. v. Brunswick Associates Limited Partnership* laid out the standard for late filings were the result of excusable neglect, Visscher said.

The review commission majority prior to the recent shift had tended to take a strict view on what was an allowable reason for late filings under the *Pioneer* standard, according to Visscher. A flooded office might pass the commission's interpretation, but paperwork not filed on time was a winning argument.

Appellate Decisions

Tilton represented Randall Mechanical in its appeal to the Eleventh Circuit.

The issue was a misunderstanding between a company manager and OSHA, Tilton said. After the company received the notice, he thought that as long as he was discussing the case with OSHA, there wasn't a need for a formal written appeal.

When Randall Mechanical learned it had missed the 15-day deadline, the company hired Tilton's firm and the notice was filed in July 2018, the commission issued a final order declaring the notice was filed too late.

Randall Mechanical filed an appeal with the Eleventh Circuit in July 2018 and, on March 18, 2020, a three-judge panel of the court sent the case back to the review commission. The company and OSHA later settled and closed the case, Tilton said.

In *Coleman Hammons*, a three-judge panel from the Fifth Circuit unanimously ruled on Nov. 6, 2019, that the review commission decided that the Pearl, Miss., contractor, wasn't entitled to have the merits of the case considered because the challenge was not timely.

The company argued that the office manager familiar with handling mail from OSHA was out when the certified letter was mailed. A mail worker left the letter on the desk of a construction supervisor who was on a two-week business trip.

When the supervisor returned and saw the OSHA letter, he immediately called the agency and filed a written notice of

The appeals court judges said Coleman Hammons' record of timely appeals of prior OSHA citations was proof it had g shouldn't be penalized for the late notice.

"Far from being inadequate, the procedures enabled the company to handle seven previous OSHA citations and in at le them by informal means within the statutory time limit," the court said. "This track record demonstrates the company's sufficient to respond to OSHA matters."

The case was remanded back to the review commission, where Coleman Hammons continues to contest the violations.

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With Appreciation,

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From: Slater, Bryan - ASAM </O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=25D6BA93C9C24315ADC663CAC1B5DB6C-SLATER, BRY>
Sent: 11/6/2020 1:45:19 PM
To: Slater, Bryan - ASAM <Slater.Bryan@DOL.gov>; Stewart, Milton AI - ASAM <[REDACTED]@dol.gov>; Cloud, Braye G - ASAM <[REDACTED]@dol.gov>; Rose, Sydney T - OASAM OHR <[REDACTED]@dol.gov>; Hooper, Shawn - OASAM OHR <[REDACTED]@dol.gov>; Lacey, Kimberly G. - OASAM OHR <[REDACTED]@DOL.gov>; Jordan, Maria - OASAM OHR <[REDACTED]@dol.gov>; Taylor, Timothy J - SOL <Taylor.Timothy.J@dol.gov>; Paredes, Fernando - OIG <[REDACTED]@oig.dol.gov>; Katz, Tracy - OIG <[REDACTED]>; Watson, Laura P - ETA <[REDACTED]>; Cerruti, Julie - ETA <Cerruti.Julie@dol.gov>; Leen, Craig - OFCCP <Leen.Craig@DOL.gov>; Davidson, Patricia J - OFCCP <[REDACTED]@dol.gov>; Gean, Lissette - OFCCP <[REDACTED]@dol.gov>; Williams, Tina T - OFCCP <[REDACTED]@dol.gov>; Bennett, Anna Laura - SOL <[REDACTED]@DOL.gov>
Subject: OIG Entrance Conference - EO 13950
Start: 4/15/2022 12:00:00 PM
End: 4/15/2022 12:30:00 PM
Recurrence: (none)
Required Attendees: Slater, Bryan - ASAM; Stewart, Milton AI - ASAM; Cloud, Braye G - ASAM; Rose, Sydney T - OASAM OHR; Hooper, Shawn - OASAM OHR; Lacey, Kimberly G. - OASAM OHR; Jordan, Maria - OASAM OHR; Taylor, Timothy J - SOL; Paredes, Fernando - OIG; Katz, Tracy - OIG; Watson, Laura P - ETA; Cerruti, Julie - ETA; Leen, Craig - OFCCP; Davidson, Patricia J - OFCCP; Gean, Lissette - OFCCP; Williams, Tina T - OFCCP; Bennett, Anna Laura - SOL
Attachments: EO 13950 Engagement Ltr_110520.pdf; EO 13950.pdf

Per the attached engagement letter, please be advised the Office of Inspector General is initiating an audit of the Department's compliance with Executive Order 13950. At the entrance conference we will discuss the audit's objective, scope, and methodology. The OIG plans to begin work immediately after the entrance conference.

The OIG POC is Tracy Katz, Audit Director.

Dial-in Number: 202-[REDACTED]
Call ID: 555 200 1701



November 5, 2020

MEMORANDUM FOR: Craig E. Leen
Assistant Secretary
for Office of Federal Contract Compliance Programs

John Pallasch
Assistant Secretary
for Employment and Training

G. Bryan Slater
Assistant Secretary
for Administration and Management

Elliot P. Lewis

FROM: ELLIOT P. LEWIS
Assistant Inspector General
for Audit

SUBJECT: Review of EO 13950 - Combatting Race and Sex
Stereotyping, Project No. 17-P21-001-50-598

The Office of Inspector General is initiating a review of the Department's compliance with Executive Order (EO) 13950, Combating Race and Sex Stereotyping, issued September 22, 2020. Our focus will be on actions taken by the Department to ensure compliance with EO 13950.

We will contact your audit liaisons to schedule an entrance conference to discuss our planned work and timeframes. We plan to begin work immediately after our meeting and would appreciate your notifying appropriate agency officials of our plans. If you have questions, please contact Tracy Katz, Audit Director, at (202)

b(6)

doig.dol.gov

cc: Bob Gaglione
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Presidential Documents

Title 3—

Executive Order 13950 of September 22, 2020

The President

Combating Race and Sex Stereotyping

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Property and Administrative Services Act, 40 U.S.C. 101 *et seq.*, and in order to promote economy and efficiency in Federal contracting, to promote unity in the Federal workforce, and to combat offensive and anti-American race and sex stereotyping and scapegoating, it is hereby ordered as follows:

Section 1. Purpose. From the battlefield of Gettysburg to the bus boycott in Montgomery and the Selma-to-Montgomery marches, heroic Americans have valiantly risked their lives to ensure that their children would grow up in a Nation living out its creed, expressed in the Declaration of Independence: “We hold these truths to be self-evident, that all men are created equal.” It was this belief in the inherent equality of every individual that inspired the Founding generation to risk their lives, their fortunes, and their sacred honor to establish a new Nation, unique among the countries of the world. President Abraham Lincoln understood that this belief is “the electric cord” that “links the hearts of patriotic and liberty-loving” people, no matter their race or country of origin. It is the belief that inspired the heroic black soldiers of the 54th Massachusetts Infantry Regiment to defend that same Union at great cost in the Civil War. And it is what inspired Dr. Martin Luther King, Jr., to dream that his children would one day “not be judged by the color of their skin but by the content of their character.”

Thanks to the courage and sacrifice of our forebears, America has made significant progress toward realization of our national creed, particularly in the 57 years since Dr. King shared his dream with the country.

Today, however, many people are pushing a different vision of America that is grounded in hierarchies based on collective social and political identities rather than in the inherent and equal dignity of every person as an individual. This ideology is rooted in the pernicious and false belief that America is an irredeemably racist and sexist country; that some people, simply on account of their race or sex, are oppressors; and that racial and sexual identities are more important than our common status as human beings and Americans.

This destructive ideology is grounded in misrepresentations of our country’s history and its role in the world. Although presented as new and revolutionary, they resurrect the discredited notions of the nineteenth century’s apologists for slavery who, like President Lincoln’s rival Stephen A. Douglas, maintained that our government “was made on the white basis” “by white men, for the benefit of white men.” Our Founding documents rejected these racialized views of America, which were soundly defeated on the blood-stained battlefields of the Civil War. Yet they are now being repackaged and sold as cutting-edge insights. They are designed to divide us and to prevent us from uniting as one people in pursuit of one common destiny for our great country.

Unfortunately, this malign ideology is now migrating from the fringes of American society and threatens to infect core institutions of our country. Instructors and materials teaching that men and members of certain races, as well as our most venerable institutions, are inherently sexist and racist are appearing in workplace diversity trainings across the country, even in

components of the Federal Government and among Federal contractors. For example, the Department of the Treasury recently held a seminar that promoted arguments that “virtually all White people, regardless of how ‘woke’ they are, contribute to racism,” and that instructed small group leaders to encourage employees to avoid “narratives” that Americans should “be more color-blind” or “let people’s skills and personalities be what differentiates them.”

Training materials from Argonne National Laboratories, a Federal entity, stated that racism “is interwoven into every fabric of America” and described statements like “color blindness” and the “meritocracy” as “actions of bias.”

Materials from Sandia National Laboratories, also a Federal entity, for non-minority males stated that an emphasis on “rationality over emotionality” was a characteristic of “white male[s],” and asked those present to “acknowledge” their “privilege” to each other.

A Smithsonian Institution museum graphic recently claimed that concepts like “[o]bjective, rational linear thinking,” “[h]ard work” being “the key to success,” the “nuclear family,” and belief in a single god are not values that unite Americans of all races but are instead “aspects and assumptions of whiteness.” The museum also stated that “[f]acing your whiteness is hard and can result in feelings of guilt, sadness, confusion, defensiveness, or fear.”

All of this is contrary to the fundamental premises underpinning our Republic: that all individuals are created equal and should be allowed an equal opportunity under the law to pursue happiness and prosper based on individual merit.

Executive departments and agencies (agencies), our Uniformed Services, Federal contractors, and Federal grant recipients should, of course, continue to foster environments devoid of hostility grounded in race, sex, and other federally protected characteristics. Training employees to create an inclusive workplace is appropriate and beneficial. The Federal Government is, and must always be, committed to the fair and equal treatment of all individuals before the law.

But training like that discussed above perpetuates racial stereotypes and division and can use subtle coercive pressure to ensure conformity of viewpoint. Such ideas may be fashionable in the academy, but they have no place in programs and activities supported by Federal taxpayer dollars. Research also suggests that blame-focused diversity training reinforces biases and decreases opportunities for minorities.

Our Federal civil service system is based on merit principles. These principles, codified at 5 U.S.C. 2301, call for all employees to “receive fair and equitable treatment in all aspects of personnel management without regard to” race or sex “and with proper regard for their . . . constitutional rights.” Instructing Federal employees that treating individuals on the basis of individual merit is racist or sexist directly undermines our Merit System Principles and impairs the efficiency of the Federal service. Similarly, our Uniformed Services should not teach our heroic men and women in uniform the lie that the country for which they are willing to die is fundamentally racist. Such teachings could directly threaten the cohesion and effectiveness of our Uniformed Services.

Such activities also promote division and inefficiency when carried out by Federal contractors. The Federal Government has long prohibited Federal contractors from engaging in race or sex discrimination and required contractors to take affirmative action to ensure that such discrimination does not occur. The participation of contractors’ employees in training that promotes race or sex stereotyping or scapegoating similarly undermines efficiency in Federal contracting. Such requirements promote divisiveness in the workplace and distract from the pursuit of excellence and collaborative achievements in public administration.

Therefore, it shall be the policy of the United States not to promote race or sex stereotyping or scapegoating in the Federal workforce or in the Uniformed Services, and not to allow grant funds to be used for these purposes. In addition, Federal contractors will not be permitted to inculcate such views in their employees.

Sec. 2. Definitions. For the purposes of this order, the phrase:

(a) “Divisive concepts” means the concepts that (1) one race or sex is inherently superior to another race or sex; (2) 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; (4) an individual should be discriminated against or receive adverse treatment solely or partly because of his or her race or sex; (5) members of one race or sex cannot and should not attempt to treat others without respect to race or sex; (6) an individual’s moral character is necessarily determined by his or her race or sex; (7) 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; (8) any individual should feel discomfort, guilt, anguish, or any other form of psychological distress on account of his or her race or sex; or (9) meritocracy or traits such as a hard work ethic are racist or sexist, or were created by a particular race to oppress another race. The term “divisive concepts” also includes any other form of race or sex stereotyping or any other form of race or sex scapegoating.

(b) “Race or sex stereotyping” means ascribing character traits, values, moral and ethical codes, privileges, status, or beliefs to a race or sex, or to an individual because of his or her race or sex.

(c) “Race or sex scapegoating” means assigning fault, blame, or bias to a race or sex, or to members of a race or sex because of their race or sex. It similarly encompasses any claim that, consciously or unconsciously, and by virtue of his or her race or sex, members of any race are inherently racist or are inherently inclined to oppress others, or that members of a sex are inherently sexist or inclined to oppress others.

(d) “Senior political appointee” means an individual appointed by the President, or a non-career member of the Senior Executive Service (or agency-equivalent system).

Sec. 3. Requirements for the United States Uniformed Services. The United States Uniformed Services, including the United States Armed Forces, shall not teach, instruct, or train any member of the United States Uniformed Services, whether serving on active duty, serving on reserve duty, attending a military service academy, or attending courses conducted by a military department pursuant to a Reserve Officer Corps Training program, to believe any of the divisive concepts set forth in section 2(a) of this order. No member of the United States Uniformed Services shall face any penalty or discrimination on account of his or her refusal to support, believe, endorse, embrace, confess, act upon, or otherwise assent to these concepts.

Sec. 4. Requirements for Government Contractors. (a) Except in contracts exempted in the manner provided by section 204 of Executive Order 11246 of September 24, 1965 (Equal Employment Opportunity), as amended, all Government contracting agencies shall include in every Government contract hereafter entered into the following provisions:

“During the performance of this contract, the contractor agrees as follows:

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; (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. The term "race or sex stereotyping" means ascribing character traits, values, moral and ethical codes, privileges, status, or beliefs to a race or sex, or to an individual because of his or her race or sex, and the term "race or sex scapegoating" means assigning fault, blame, or bias to a race or sex, or to members of a race or sex because of their race or sex.

2. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under the Executive Order of September 22, 2020, entitled Combating Race and Sex Stereotyping, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

3. In the event of the contractor's noncompliance with the requirements of paragraphs (1), (2), and (4), or with any rules, regulations, or orders that may be promulgated in accordance with the Executive Order of September 22, 2020, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246, and such other sanctions may be imposed and remedies invoked as provided by any rules, regulations, or orders the Secretary of Labor has issued or adopted pursuant to Executive Order 11246, including subpart D of that order.

4. The contractor will include the provisions of paragraphs (1) through (4) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States."

(b) The Department of Labor is directed, through the Office of Federal Contract Compliance Programs (OFCCP), to establish a hotline and investigate complaints received under both this order as well as Executive Order 11246 alleging that a Federal contractor is utilizing such training programs in violation of the contractor's obligations under those orders. The Department shall take appropriate enforcement action and provide remedial relief, as appropriate.

(c) Within 30 days of the date of this order, the Director of OFCCP shall publish in the *Federal Register* a request for information seeking information from Federal contractors, Federal subcontractors, and employees of Federal contractors and subcontractors regarding the training, workshops, or similar programming provided to employees. 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.

Sec. 5. Requirements for Federal Grants. The heads of all agencies shall review their respective grant programs and 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 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. Within 60 days of the date of this order, the heads of agencies shall each submit a report to the Director of the Office of Management and Budget (OMB) that lists all grant programs so identified.

Sec. 6. *Requirements for Agencies.* (a) The fair and equal treatment of individuals is an inviolable principle that must be maintained in the Federal workplace. Agencies should continue all training that will foster a workplace that is respectful of all employees. Accordingly:

(i) The head of each agency shall use his or her authority under 5 U.S.C. 301, 302, and 4103 to ensure that the agency, agency employees while on duty status, and any contractors hired by the agency to provide training, workshops, forums, or similar programming (for purposes of this section, "training") to agency employees do not teach, advocate, act upon, or promote in any training to agency employees any of the divisive concepts listed in section 2(a) of this order. Agencies may consult with the Office of Personnel Management (OPM), pursuant to 5 U.S.C. 4116, in carrying out this provision; and

(ii) Agency diversity and inclusion efforts shall, first and foremost, encourage agency employees not to judge each other by their color, race, ethnicity, sex, or any other characteristic protected by Federal law.

(b) The Director of OPM shall propose regulations providing that agency officials with supervisory authority over a supervisor or an employee with responsibility for promoting diversity and inclusion, if such supervisor or employee either authorizes or approves training that promotes the divisive concepts set forth in section 2(a) of this order, shall take appropriate steps to pursue a performance-based adverse action proceeding against such supervisor or employee under chapter 43 or 75 of title 5, United States Code.

(c) Each agency head shall:

(i) issue an order incorporating the requirements of this order into agency operations, including by making compliance with this order a provision in all agency contracts for diversity training;

(ii) request that the agency inspector general thoroughly review and assess by the end of the calendar year, and not less than annually thereafter, agency compliance with the requirements of this order in the form of a report submitted to OMB; and

(iii) assign at least one senior political appointee responsibility for ensuring compliance with the requirements of this order.

Sec. 7. *OMB and OPM Review of Agency Training.* (a) Consistent with OPM's authority under 5 U.S.C. 4115–4118, all training programs for agency employees relating to diversity or inclusion shall, before being used, be reviewed by OPM for compliance with the requirements of section 6 of this order.

(b) If a contractor provides a training for agency employees relating to diversity or inclusion that teaches, advocates, or promotes the divisive concepts set forth in section 2(a) of this order, and such action is in violation of the applicable contract, the agency that contracted for such training shall evaluate whether to pursue debarment of that contractor, consistent with

applicable law and regulations, and in consultation with the Interagency Suspension and Debarment Committee.

(c) Within 90 days of the date of this order, each agency shall report to OMB all spending in Fiscal Year 2020 on Federal employee training programs relating to diversity or inclusion, whether conducted internally or by contractors. Such report shall, in addition to providing aggregate totals, delineate awards to each individual contractor.

(d) The Directors of OMB and OPM may jointly issue guidance and directives pertaining to agency obligations under, and ensuring compliance with, this order.

Sec. 8. Title VII Guidance. The Attorney General should continue to assess the extent to which workplace training that teaches the divisive concepts set forth in section 2(a) of this order may contribute to a hostile work environment and give rise to potential liability under Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e *et seq.* If appropriate, the Attorney General and the Equal Employment Opportunity Commission shall issue publicly available guidance to assist employers in better promoting diversity and inclusive workplaces consistent with Title VII.

Sec. 9. Effective Date. This order is effective immediately, except that the requirements of section 4 of this order shall apply to contracts entered into 60 days after the date of this order.

Sec. 10. General Provisions. (a) This order does not prevent agencies, the United States Uniformed Services, or contractors from promoting racial, cultural, or ethnic diversity or inclusiveness, provided such efforts are consistent with the requirements of this order.

(b) Nothing in this order shall be construed to prohibit discussing, as part of a larger course of academic instruction, the divisive concepts listed in section 2(a) of this order in an objective manner and without endorsement.

(c) If any provision of this order, or the application of any provision to any person or circumstance, is held to be invalid, the remainder of this order and the application of its provisions to any other persons or circumstances shall not be affected thereby.

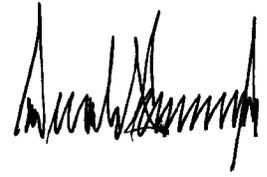
(d) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department, agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(e) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(f) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

A handwritten signature in black ink, appearing to be a stylized name, possibly "Donald Trump", written in a cursive style.

THE WHITE HOUSE,
September 22, 2020.

[FR Doc. 2020-21534
Filed 9-25-20; 8:45 am]
Billing code 3295-F0-P

From: Cloud, Braye G - ASAM </O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=CAB832325F8F4C9B85BE14983B351B10-CLOUD, BRAY> on behalf of Slater, Bryan - ASAM

Sent: 11/6/2020 1:45:00 PM

To: Stewart, Milton AI - ASAM <(b) 6>; Cloud, Braye G - ASAM <(b) 6>; Rose, Sydney T - OASAM OHR <(b) 6>; Hooper, Shawn - OASAM OHR <(b) 6>; Lacey, Kimberly G. - OASAM OHR <(b) 6>; Jordan, Maria - OASAM OHR <(b) 6>; Taylor, Timothy J - SOL <Taylor.Timothy.J@dol.gov>; Paredes, Fernando - OIG <(b) 6>; Katz, Tracy - OIG <(b) 6>; Watson, Laura P - ETA <(b) 6>; Cerruti, Julie - ETA <Cerruti.Julie@dol.gov>; Leen, Craig - OFCCP <Leen.Craig@DOL.gov>; Davidson, Patricia J - OFCCP <(b) 6>; Gean, Lissette - OFCCP <(b) 6>; Williams, Tina T - OFCCP <(b) 6>; Bennett, Anna Laura - SOL <(b) 6>

Subject: OIG Entrance Conference - EO 13950

Start: 11/10/2020 2:00:00 PM

End: 11/10/2020 2:30:00 PM

Show Time As: Free

Recurrence: (none)

Required Attendees: Stewart, Milton AI - ASAM; Cloud, Braye G - ASAM; Rose, Sydney T - OASAM OHR; Hooper, Shawn - OASAM OHR; Lacey, Kimberly G. - OASAM OHR; Jordan, Maria - OASAM OHR; Taylor, Timothy J - SOL; Paredes, Fernando - OIG; Katz, Tracy - OIG; Watson, Laura P - ETA; Cerruti, Julie - ETA; Leen, Craig - OFCCP; Davidson, Patricia J - OFCCP; Gean, Lissette - OFCCP; Williams, Tina T - OFCCP; Bennett, Anna Laura - SOL

Attachments: EO 13950 Engagement Ltr_110520.pdf; EO 13950.pdf

Per the attached engagement letter, please be advised the Office of Inspector General is initiating an audit of the Department's compliance with Executive Order 13950. At the entrance conference we will discuss the audit's objective, scope, and methodology. The OIG plans to begin work immediately after the entrance conference.

The OIG POC is Tracy Katz, Audit Director.

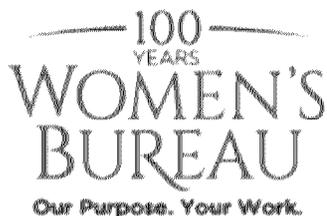
Dial-in Number: (b) 6

Call ID: 555 200 1701

From:
To: Gean, Lissette - OFCCP
CC: Williams, Tina T - OFCCP; Seely, Christopher - OFCCP
Sent: 11/20/2020 7:50:34 PM
Subject: RE: EO 13950 INT and INT Attachments
Attachments: EO 13950 INT DRAFT 11_20_20.docx; EO 13950 Templates DRAFT 11_20_20.docx

These are really well done. Please thank Yota for me. I spoke with Chris and gave him my feedback. Have a nice weekend everyone, Craig

Craig E. Leen
OFCCP Director



From: Gean, Lissette - OFCCP <(b) 6>
Sent: Friday, November 20, 2020 2:36 PM
To: Leen, Craig - OFCCP <Leen.Craig@DOL.gov>
Subject: EO 13950 INT and INT Attachments
Importance: High

Hi Craig,

I'm attaching the current working draft of the INT and INT attachments.

This is the process DPPD follows when developing INTs:

Policy will complete the draft (after incorporating your input) and route it to the region/division directors, so they can incorporate their feedback on any potential field implementation issues, before CRLM review and clearance.

Thanks,
Lissette

From: Carl Campbell - Public </O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS /CN=562145F6C3C842AB8B5FA66CF386FBD4-CARL CAMPBE>
To: zzosec-agency-heads; zzOSEC-DAS; zzDOL-ADMIN-OFFICERS GROUP
CC: Slater, Bryan - ASAM; Langhaim, David L - ASAM; Taylor, Timothy J - SOL; Stewart, Milton AI - ASAM; Foster, Sandra E - OASAM OSPE; Matz, Jillian - OASAM OSPE; Ritchie, Duyen T - OASAM OSPE; Schmidt, Joseph J - OASAM OSPE; Tabash, Leslie A - OASAM OSPE; Katz, Tracy - OIG; Chandler, Ryan P - OASAM OSPE; Campbell, Carl V - OASAM OSPE
Sent: 11/24/2020 3:39:00 PM
Subject: Class Deviation from the Federal Acquisition Regulation for Executive Order 13950
Attachments: Class Deviation - EO 13950.pdf

Colleagues,

Please find attached a memorandum that approves a class deviation from the Federal Acquisition Regulation to implement Section 4 of Executive Order 13950, Combating Race and Sex Stereotyping.

Should you have any questions regarding this memorandum, please contact Ryan Chandler, Director, Strategy & Administration, at [b\(6\)@dol.gov](mailto:b(6)@dol.gov).



Carl V. Campbell, DBA
Senior Procurement Executive

Office of the Assistant Secretary for Administration and Management

U.S. Department of Labor
200 Constitution Ave NW
Washington, D.C. 20210

Tel: (202) [b\(6\)@dol.gov](tel:b(6)@dol.gov)
E-Mail: [b\(6\)@dol.gov](mailto:b(6)@dol.gov)

Find *your* current OSPE Points of Contact [HERE](#)



MEMORANDUM FOR HEADS OF CONTRACTING ACTIVITIES,
CONTRACTING OFFICERS

Carl V. Campbell Digitally signed by Carl V. Campbell
Date: 2020.11.24 14:21:12 -05'00'

FROM: CARL V. CAMPBELL
Senior Procurement Executive

SUBJECT: Class Deviation from the Federal Acquisition Regulation for Executive Order 13950 Combating Race and Sex Stereotyping

This memorandum approves a class deviation from the Federal Acquisition Regulation (FAR) to implement Section 4 of Executive Order (E.O.) 13950, Combating Race and Sex Stereotyping (85 FR 60683, September 28, 2020).

Effective immediately, except for contracts exempted from the requirements of E.O. 11246 of September 24, 1965 (Equal Employment Opportunity), as amended (see FAR 22.807 and E.O. 13950, Combating Race and Sex Stereotyping), contracting officers shall:

(a) Include the clause provided in the attachment in solicitations issued on or after November 20, 2020, and in any resultant contracts that will include the clause at FAR 52.222-26, Equal Opportunity.

(b) Amend solicitations issued prior to November 20, 2020, to include the clause provided in the attachment and in any resultant contract award expected to occur on or after November 20, 2020, if the contract is contemplated to include the clause at FAR 52.222-26, Equal Opportunity.

(c) Include the clause provided in the attachment in all contracts for diversity and inclusion training.

This class deviation implements Section 4 of E.O. 13950, Combating Race and Sex Stereotyping (85 FR 60683, September 28, 2020). E.O. seeks to promote economy and efficiency in federal contracting, to promote unity in the federal workforce, and to combat race and sex stereotyping and scapegoating. Section 4 requires agencies to include a clause in new solicitations and resultant contracts that prohibits contractors from using any workplace training that inculcates in its employees any form of race or sex stereotyping or any form of race or sex scapegoating. Section 4 provides an exception for contracts exempted under E.O. 11246. FAR 22.807 includes a list of these exemptions and instructions for requesting the exemptions described at FAR 22.807(a)(2) and (b)(5).

This class deviation remains in effect until it is incorporated in the FAR or otherwise rescinded.

All questions related to this memorandum should be sent to Ryan Chandler at
b(6) @dol.gov.

Attachment

cc: Bryan Slater, Chief Acquisition Officer
Agency Administrative Officers
Agency Heads
Tracy Katz

Changes indicated in **[bold text]** for additions or by ~~strike through~~ for deletions.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

* * * * *

52.222-99 Combating Race and Sex Stereotyping. [(DEVIATION 2021-001)]

Use this clause in solicitations and contracts, when a contract is contemplated that will include the clause at Federal Acquisition Regulation (FAR) 52.222-26, Equal Opportunity or its Alternate I.

**COMBATING RACE AND SEX STEREOTYPING
(DEVIATION 2021-001) (NOV 2020)**

(a) *Definitions.* As used in this clause—

“*Race or sex scapegoating*” means assigning fault, blame, or bias to a race or sex, or to members of a race or sex because of their race or sex.

“*Race or sex stereotyping*” means ascribing character traits, values, moral and ethical codes, privileges, status, or beliefs to a race or sex, or to an individual because of his or her race or sex.

(b) *Exemptions.* The exemptions that apply to Executive Order (E.O.) 11246 also apply to E.O. 13950. See FAR 22.807.

(c) *Compliance with E. O. 13950, Combating Race and Sex Stereotyping.* Unless exempted under paragraph (b) of this clause, 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—

- (1) One race or sex is inherently superior to another race or sex;
- (2) An individual, by virtue of his or her race or sex, is inherently racist, sexist, or oppressive, whether consciously or unconsciously;
- (3) An individual should be discriminated against or receive adverse treatment solely or partly because of his or her race or sex;

(4) Members of one race or sex cannot and should not attempt to treat others without respect to race or sex;

(5) An individual's moral character is necessarily determined by his or her race or sex;

(6) 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;

(7) Any individual should feel discomfort, guilt, anguish, or any other form of psychological distress on account of his or her race or sex; or

(8) Meritocracy or traits such as a hard work ethic are racist or sexist, or were created by a particular race to oppress another race.

(d) *Notice.* The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice provided below advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

NOTICE

E.O. 13950, Combating Race and Sex Stereotyping Employers Holding Federal Contracts or Subcontracts

Contractors 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 following concepts that—

(1) One race or sex is inherently superior to another race or sex;

(2) An individual, by virtue of his or her race or sex, is inherently racist, sexist, or oppressive, whether consciously or unconsciously;

(3) An individual should be discriminated against or receive adverse treatment solely or partly because of his or her race or sex;

(4) Members of one race or sex cannot and should not attempt to treat others without respect to race or sex;

(5) An individual's moral character is necessarily determined by his or her race or sex;

(6) 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;

(7) Any individual should feel discomfort, guilt, anguish, or any other form of psychological distress on account of his or her race or sex; or

(8) Meritocracy or traits such as a hard work ethic are racist or sexist, or were created by a particular race to oppress another race.

For use in this notice, the terms—

“Race or sex scapegoating” means assigning fault, blame, or bias to a race or sex, or to members of a race or sex because of their race or sex; and

“Race or sex stereotyping” means ascribing character traits, values, moral and ethical codes, privileges, status, or beliefs to a race or sex, or to an individual because of his or her race or sex.

Any person who believes a contractor has violated its nondiscrimination or affirmative action obligations under this notice should immediately contact the Office of Federal Contract Compliance Programs (OFCCP) Complaint Hotline to Combat Race and Sex Stereotyping at 202-343-2008 or via email at OFCCPComplaintHotline@dol.gov.

(End of notice)

(e) *Noncompliance*. If the Department of Labor’s Office of Federal Contract Compliance Programs (OFCCP) determines that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts, under the procedures authorized in E. O. 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in E. O. 11246, as amended; in the rules, regulations, and orders of the Secretary of Labor; or as otherwise provided by law.

(f) *Subcontracts*. (1) The Contractor shall include the substance of this clause, including this paragraph (f), in all subcontracts that exceed \$10,000 and are not exempted by the rules, regulations, or orders of the Secretary of Labor issued under E.O. 11246 and E.O. 13950, as amended, so that these terms and conditions of this clause will be binding upon each subcontractor.

(2) The Contractor shall take such action with respect to any subcontract as the Director of OFCCP may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance, provided, that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor as a result of any direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

(End of clause)