



December 29, 2020

The Honorable Russell T. Vought
Director
Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

This report presents the results of our review of the Department of Labor's (DOL) compliance in implementing the requirements of Executive Order (EO) 13950, Combating Race and Sex Stereotyping.¹ EO 13950 prohibits the federal government from promoting race or sex stereotyping in the federal workforce and Uniformed Services, and from using contracting and grant funds for any of these purposes. The EO further states that federal agencies, contractors, and grant recipients should instead foster environments devoid of hostility and should provide training that fosters inclusive workplaces because the federal government is, and must always be, committed to the fair and equal treatment of all individuals before the law.

The EO requires agency Inspectors General to annually assess the Department's compliance with the EO and report the results by December 31 to the Office of Management and Budget (OMB). Thus, we conducted a review to answer the following question:

Is the Department of Labor meeting the requirements of EO 13950, Combating Race and Sex Stereotyping?

Based on the results of our audit work, we determined that as of December 21, 2020, the Department of Labor is meeting all 10 requirements of EO 13950, Combating Race and Sex Stereotyping. The scope, methodology and criteria for our review is detailed in Attachment – 1.

¹ President Donald Trump issued Executive Order 13950, Combating Race and Sex Stereotyping, on September 22, 2020

BACKGROUND

On September 22, 2020, President Donald J. Trump issued EO 13950, Combating Race and Sex Stereotyping. The EO sets forth the policy of the United States “not to promote race or sex stereotyping or scapegoating” and prohibits federal contractors from instilling such views in their employees in workplace diversity and inclusion trainings. The EO became effective immediately when signed on September 22, 2020, but the requirements for federal contractors and subcontractors apply to contracts entered into 60 days after the EO was signed, that is, November 21, 2020. Section 6(c)(ii) of the EO states that each agency head shall request its agency Inspector General to 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.

EO 13950 includes two requirements that apply specifically to DOL’s Office of Federal Contracting Compliance Programs (OFCCP) and eight requirements that all federal agencies, including DOL, must address (see Attachments 2 and 3, respectively, for each of the requirements).

RESULTS

The results of our review are detailed below and are broken out into two sections. The first section includes our assessment of OFCCP efforts in meeting the two EO 13950 requirements specific to DOL-OFCCP. The second section includes our assessment of the Department’s efforts in meeting the eight EO 13950 requirements that apply to all federal agencies.

OFCCP IS MEETING THE TWO EO 13950 REQUIREMENTS SPECIFIC TO DOL

OFCCP is meeting the two EO 13950 requirements specific to DOL. As of December 21, 2020, OFCCP efforts to implement the EO requirements included establishing a hotline, tracking complaints, assigning complaints to regional offices, and publishing a request for information in the Federal Register.

OFCCP Requirement No. 1, Hotline and Investigations – Meets

EO 13950 Requirement: The EO requires OFCCP to establish a hotline and investigate complaints received under both EO 13950 as well as EO 11246² that allege federal contractors are conducting training programs in violation of contractor obligations under those orders.

OIG Assessment: OFCCP is meeting this requirement. On September 28, 2020, OFCCP established a hotline and email address to receive and investigate complaints under existing EO 11246 as well as EO 13950. OFCCP officials stated on December 21, 2020, that OFCCP has begun processing complaints.

OFCCP Requirement No. 2, Request for Information – Meets

EO 13950 Requirement: The EO requires the OFCCP Director to publish in the Federal Register, within 30 days from the date of the EO (October 22, 2020), a Request for Information (RFI) seeking information from federal contractors, federal subcontractors, and employees regarding the training, workshops, or similar programming provided to employees by federal contractors and subcontractors.

OIG Assessment: OFCCP is meeting this requirement. On October 22, 2020, the OFCCP Director published in the Federal Register³ an RFI 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 RFI requested copies of trainings, workshops, or similar programming having to do with diversity and inclusion, as well as information about the duration, frequency, and expense of such activities. The information request was voluntary and responses were due by December 1, 2020. OFCCP officials stated that 1,400 comments had been received in response to the Request for Information: Race and Sex Stereotyping and Scapegoating. Further, OFCCP stated that 1,373 comments were posted to www.regulations.gov for public viewing, although 27 comments had to be redacted or were exact duplicates. According to OFCCP officials, none of the training materials submitted in response to the RFI were submitted on behalf of an employer though some were submitted by employees complaining about training. The agency plans to review the information provided in responses to the RFI, to

² Executive Order 11246 — Equal Employment Opportunity, September 24, 1965, as amended, prohibits federal contractors and federally-assisted construction contractors and subcontractors who hold over \$10,000 in Government contracts in one year from discriminating in employment decisions on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin. The EO also requires Government contractors to take affirmative action to ensure that equal opportunity is provided in all aspects of their employment. Additionally, EO 11246 prohibits federal contractors and subcontractors from, under certain circumstances, taking adverse employment actions against applicants and employees for asking about, discussing, or sharing information about their pay or the pay of their co-workers.

³ OFCCP Federal Register Request for Information, from: <https://www.federalregister.gov/documents/2020/10/22/2020-23339/request-for-information-race-and-sex-stereotyping-and-scapegoating>, last accessed on 12/19/2020.

inform its implementation of the new EO, including its guidance to field offices for how to evaluate contractor training for compliance with EO 13950 and EO 11246.

THE DEPARTMENT OF LABOR IS MEETING THE EO 13950 REQUIREMENTS APPLICABLE TO EACH FEDERAL AGENCY

DOL is meeting the eight requirements applicable to each federal agency under EO 13950.

DOL Requirement No. 1, Contract Provisions – Meets

EO 13950 Requirement: The EO requires that Government contracts and related subcontracts include provisions that state the contractor shall not use any workplace training that inculcates in its employees any form of race or sex stereotyping or scapegoating; this requirement applies to contracts entered into on or after November 21, 2020.

OIG Assessment: DOL is meeting this requirement. The Department's Senior Procurement Executive issued a memo to all Heads of Contracting Activities and Contracting Officers on November 24, 2020, titled, *Class Deviation from the Federal Acquisition Regulation for Executive Order 13950 Combating Race and Sex Stereotyping*. The memo approves a class deviation from the Federal Acquisition Regulation (FAR) to implement Section 4 of the EO. The memo requires: 1) the attached clause be part of any solicitation issued on or after November 20, 2020, and be included in any resultant contracts that will include the clause at FAR 52.222-26, Equal Opportunity⁴; 2) the amendment of 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; and 3) the clause be included in the attachment to all contracts for diversity and inclusion training.

As of December 3, 2020, the Department had issued 11 contracts on or after November 21, 2020. We reviewed all the contracts and determined that each included the new EO 13950 contract clauses provided in the November 24, 2020 memorandum from the Department's Senior Procurement Executive.

⁴ FAR 52.222-26 requires certain provisions be included in contracts related to nondiscrimination in employment, affirmative action requirements; required postings of notices; nondiscrimination clauses in all solicitations or advertisements for employees; prohibition against taking adverse employment actions against applicants and employees for asking about, discussing, or sharing information about their pay or the pay of their co-workers; providing appropriate labor unions or workers' representatives notice of the contractor's commitments under this clause; permit access to its premises by the contracting agency or OFCCP in order to conduct on-site compliance evaluations and complaint investigations; and including all of the same terms and conditions in every subcontract not otherwise exempt by rules regulations or orders of the Secretary of Labor.

According to Department Officials, the Office of Acquisition Services and the Job Corps Acquisition Services will coordinate with the Director of Procurement Policy to query the Department's Acquisition Management System and the Federal Procurement Data System – Next Generation to find all contracts for diversity and inclusion training and modify those contract actions to include DOL local clause 2021-01. According to Department Officials, the Office of the Senior Procurement Executive (OSPE) contemplates all contract actions will be modified on or before March 31, 2021. The OSPE Procurement Policy Office will keep track of all solicitations and modifications wherein the clause was included and provide a report to the Senior Procurement Executive at the end of each month.

DOL Requirement No. 2, Grantee Certifications - Meets

EO 13950 Requirement: The EO requires that 1) grant programs be reviewed and identified for which DOL may, as a condition of receiving such a grant, require the recipient to certify that it would not use federal funds to promote race or sex stereotyping or scapegoating and 2) DOL submit a report to the OMB within 60 days of the date of the EO (November 21, 2020) that lists all grant programs so identified.

OIG Assessment: DOL is meeting this requirement. According to DOL officials, the Department collected information Department-wide on grants and identified grants that, as a condition of receiving such a grant, require the recipient to certify that it would not use federal funds to promote race or sex stereotyping or scapegoating. The Department submitted a report to OMB on November 20, 2020, that listed all grant programs so identified.

DOL Requirement No. 3, Agency Operations – Meets

EO 13950 Requirement: The EO requires that the Department incorporate EO 13950 requirements into agency operations.

OIG Assessment: DOL is meeting this requirement. On November 13, 2020, the Secretary of Labor issued Secretary's Order 11-2020–Implementation of EO 13950--to ensure that the Department of Labor, its employees while on duty status, and its contractors do not in any training to agency employees teach, advocate, act upon, or promote any of the divisive concepts listed in section 2(a) of EO 13950, Combating Race and Sex Stereotyping, and to ensure that the Department's diversity and inclusion efforts instruct agency employees not to judge each other by any characteristic protected by federal law. Thus, Secretary's Order 11-2020 has incorporated the federal-wide requirements of EO13950 into the Department's operations.

In addition, Secretary's Order 11-2020 assigned EO 13950 responsibilities to applicable Department staff ⁵ for ensuring the proper implementation of EO 13950.

DOL Requirement No.4, Assignment of Senior Agency Official – Meets

EO 13950 Requirement: The EO requires at least one senior political appointee be assigned responsibility for ensuring compliance with the requirements of EO 13950.

OIG Assessment: DOL is meeting this requirement. On September 28, 2020, the Deputy Secretary sent an email to all DOL agency heads, designating the Deputy Solicitor as having been assigned the responsibility for ensuring DOL's compliance with the requirements of EO 13950.

DOL Requirement No. 5, OIG Review – Meets

EO 13950 Requirement: The EO requires the Department to request the OIG review and assess compliance with EO 13950 prior to December 31, 2020, and not less than annually thereafter.

OIG Assessment: DOL has met this requirement. The Department's implementation plan included having the agency head send the OIG a request as required by section 6(c)(ii). However, the OIG communicated with the Department on October 30, 2020, to determine its intent to request such a review. Upon acknowledgement of the Department's intent, the OIG initiated a review on November 5, 2020. Department officials therefore viewed the requirement as overcome by events and did not believe it necessary to issue a formal request for review by the OIG to assess compliance with the EO.

DOL Requirement No. 6, Prohibited Training – Meets

EO 13950 Requirement: The EO requires that the Department take steps to ensure its agencies, agency employees while on duty status, and any contractors hired by the agency to provide training, workshops, forums, or similar programming to agency employees, do not teach, advocate, act upon, or promote any of the divisive concepts listed in the EO in any training to agency employees.

DOL OIG Assessment: DOL is meeting this requirement. The Department issued a memo for all Administrative Officers and sub-agency heads to place on hold all diversity and inclusion training at this time. DOL is developing new standardized diversity training in an effort to consolidate all diversity and inclusion training from the many diversity and inclusion programs currently deployed into one single

⁵ The DOL staff assigned EO 13950 responsibilities by Secretary's Order 11-2020 are the: 1) Deputy Secretary, 2) Senior EO 13950 Compliance Official, 3) Assistant Secretary for Administration and Management, 4) Director of the Office of Federal Contract Compliance Programs, 5), Assistant Secretary for Policy, 6) Agency Heads 7) Department Employees, and 8) Solicitor of Labor.

program. DOL officials stated that the Department is also working on updating the Department of Labor Manual Series and the Department of Labor Acquisition Manual to reflect EO 13950.

DOL Requirement No. 7, Office of Personnel Management (OPM) Review of Training – Meets

EO 13950 Requirement: The EO requires the Department to ensure all training programs for agency employees relating to diversity or inclusion, be reviewed by OPM for EO compliance before being offered.

OIG Assessment: DOL is meeting this requirement. The Department's Deputy Solicitor, who serves as DOL's EO 13950 Compliance Official, sent a memorandum to all agency heads on November 13, 2020, on the subject of "Implementation of Executive Order 13950 and Secretary's Order 11-2020". The memo temporarily suspended all DOL component diversity or inclusion training upon issuance of EO 13950. According to DOL officials, the Department has since collected a copy of each DOL component agency's individual diversity and/or inclusion training programs and is developing one, Department-wide diversity and/or inclusion training program for all DOL employees and contractors. Once the new training program is developed, it will be provided to OPM for review and approval.

In addition, the memo requires that agency heads review and approve in advance any expenditure for federal employee diversity and inclusion training but only after certifying that the curriculum meets the standard of fair and equal treatment of each individual. In addition, the Department's Deputy Solicitor, in the capacity as the EO 13950 Compliance Official, must also approve and certify Agency Diversity and Inclusion training. Finally, the memo requires agency heads to take all appropriate actions to align their public-facing information with the requirements for training federal employees outlined in EO 13950. If an agency provides external, publicly directed training or similar programs that include or refer to the topics identified in EO 13950 and OMB guidance, the agency must contact the Deputy Solicitor before conducting any such programs.

DOL Requirement No. 8, Reporting Training Expenditures – Meets

EO 13950 Requirement: The EO requires the Department to ensure that all spending in Fiscal Year 2020 on Federal employee training programs relating to diversity or inclusion, whether conducted internally or by contractors, be reported to OMB within 90 days of EO issuance, or December 21, 2020.

OIG Assessment: DOL is meeting this requirement. On December 16, 2020, the Department provided OMB its FY20 spending on Federal employee training programs relating to diversity or inclusion, whether conducted internally or by contractors.

OIG'S RECOMMENDATIONS

We are not making any recommendations related to the results of our assessment presented in this report. Management's response to the draft report is included in its entirety in Attachments 4 and 5.

SUMMARY OF OFCCP'S RESPONSE

The Director of the Office of Federal Contractor Compliance Programs appreciated the Office of Inspector General's efforts and insights and stated the Office of Federal Contract Compliance Programs (OFCCP) concurs with the Office of Inspector General's findings that the agency is meeting the two Executive Order (EO) 13950 requirements specified in Section 4. As of December 22, 2020, OFCCP efforts to implement the EO requirements included establishing a hotline, tracking complaints, and publishing a request for information in the Federal Register. Additionally, the agency had started processing the complaints received and reviewing them under EO 11246 and EO 13950, where applicable.

In addition, the Director of OFCCP stated that due to a December 22, 2020, court decision, OFCCP is ceasing implementation and enforcement of Section 4, Requirements for Government Contracts, of EO 13950 in compliance with the court decision issued. The OIG acknowledges that this court decision took place. However, it occurred outside of our December 21, 2020, scope of work. Accordingly, we did not review the court's decisions or OFCCP's subsequent actions.

SUMMARY OF DOL'S RESPONSE.

The Assistant Secretary of Administration and Management appreciated the Office of Inspector General's efforts and insights and stated that the Department's new Diversity and Inclusion training was submitted to OPM for review and approval on December 16, 2020, and OPM approved the training on December 18, 2020.

If you have any questions regarding the information we have provided, please contact me at 202-693-5100. Alternatively, your staff may contact Laura B. Nicolosi, Acting Assistant Inspector General for Audit, at 202-693-6993.

Sincerely,



Larry D. Turner
Acting Inspector General

Attachments

Cc: Timothy J. Taylor
Deputy Solicitor
of Labor
EO 13950 Senior Agency Official

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

Bryan Slater
Assistant Secretary
for Administration and Management

John Pallasch
Assistant Secretary
for Employment and Training

Louis Feagans,
Office of Management and Budget

ATTACHMENT 1: SCOPE, METHODOLOGY, & CRITERIA

SCOPE

We reviewed the Department's actions from September 22, 2020, through December 21, 2020, towards meeting the EO requirements. We assessed the status of DOL's implementation efforts by conducting interviews with DOL management officials and analyzing the evidence they provided.

METHODOLOGY

We conducted this review in accordance with U.S. Department of Labor, Office of Inspector General internal policies and procedures. Those policies and procedures require that we plan and perform our work to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our objective.

To accomplish our objective, we reviewed EO 13950 and other relevant guidance, interviewed DOL officials from OFCCP, ETA, and OASAM, and analyzed documentation provided by DOL related to the implementation of EO 13950.

CRITERIA

- Executive Order 13950, *Combating Race and Sex Stereotyping*, September 22, 2020
- Executive Order 11246, *Equal Employment Opportunity*, September 24, 1965
- OMB M-20-34, *Training in Federal Government*, September 4, 2020
- OMB Memorandum M-20-37, *Ending Employee Trainings that Use Divisive Propaganda to Undermine the Principle of Fair and Equal Treatment for All*, September 28, 2020
- Office of Personnel Management (OPM) Guidance on *Mandatory Review of Employee Training under EO 13950 September 22, 2020*, October 2, 2020

ATTACHMENT 2: OFCCP EO 13950 REQUIREMENTS

The EO requires that DOL - Office of Federal Contract Compliance Programs:

1. Establish a hotline and investigate complaints received under both EO 13950 as well as EO 11246 alleging that a Federal contractor is utilizing such training programs in violation of the contractor's obligations under those orders.
2. Publish, within 30 days of the date of EO 13950, a request in the Federal Register 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.

ATTACHMENT 3: EO 13950 REQUIREMENTS FOR FEDERAL AGENCIES

The EO requires that all Federal agency heads ensure the following:

1. Government contracts and related subcontracts include provisions that state 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.
2. Grant programs are reviewed and identified 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 race or sex stereotyping or scapegoating. Within 60 days of the date of this order, the heads of agencies shall submit a report to the Director of the Office of Management and Budget (OMB) that lists all grant programs so identified.
3. An order incorporating the EO requirements is issued into agency operations, including making compliance with this order a provision in all agency contracts for diversity training.
4. At least one senior political appointee is assigned responsibility for ensuring compliance with the requirements of this order.
5. Each agency head shall request the agency Inspector General to thoroughly review and assess by the end of the calendar year, and not less than annually thereafter, agency compliance with the requirements of this order in the form of a report submitted to the Office of Management and Budget.
6. Agency, agency employees while on duty status, and any contractors hired by the agency to provide training, workshops, forums, or similar programming to agency employees do not teach, advocate, act upon, or promote in any training to agency employees any of the divisive concepts listed in the EO.
7. 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 the EO.
8. All spending in Fiscal Year 2020 on Federal employee training programs relating to diversity or inclusion, whether conducted internally or by contractors, is reported to OMB within 90 days of the EO.

ATTACHMENT 4: OFCCP'S RESPONSE TO THE REPORT

U.S. Department of Labor

Office of Federal Contract Compliance Programs
200 Constitution Avenue, N.W.
Washington, D.C. 20210



December 28, 2020

Mr. Elliot P. Lewis
Assistant Inspector General for Audit
U.S. Department of Labor
200 Constitution Avenue, NW
Washington DC 20210

Dear Mr. Lewis:

Thank you for the opportunity to review and comment on draft report no. 17-21-002-50-598, *Review of the Department of Labor's Compliance in Implementing the Requirements of Executive Order 13950*. We appreciate the Office of Inspector General's efforts and insights.

The Office of Federal Contract Compliance Programs (OFCCP) concurs with the Office of Inspector General's findings that the agency is meeting the two Executive Order (EO) 13950 requirements specified in Section 4. As of December 22, 2020, OFCCP efforts to implement the EO requirements included establishing a hotline, tracking complaints, and publishing a request for information in the Federal Register. Additionally, the agency had started processing the complaints received and reviewing them under EO 11246 and EO 13950, where applicable.

On December 22, 2020, a federal district court judge in the Northern District of California issued a preliminary injunction enjoining OFCCP from implementing, enforcing, or effectuating Section 4 of Executive Order 13950 "in any manner against any recipient of federal funding by way of contract [or] subcontract..." This preliminary injunction took effect immediately upon issuance of the order. Accordingly, please note that OFCCP is ceasing implementation and enforcement of Section 4 of EO 13950 in compliance with the Preliminary Injunction issued.

Sincerely,

Craig E. Leen
Director

ATTACHMENT 5: DOL'S RESPONSE TO THE REPORT

U.S. Department of Labor

Office of the Assistant Secretary
for Administration and Management
Washington, D.C. 20210



Mr. Elliot P. Lewis
Assistant Inspector General for Audit
U.S. Department of Labor
200 Constitution Ave. NW
Washington, DC 20210

Dear Mr. Lewis:

Thank you for the opportunity to review and comment on draft report 17-21-002-50-598, *Review of the Department of Labor's Compliance in Implementing the Requirements of Executive Order 13950*. We appreciate the Office of Inspector General's efforts and insights.

The Department's new Diversity and Inclusion training was submitted to OPM for review and approval on December 16, 2020, and OPM approved on December 18, 2020.

Should you have any questions regarding the Department's response, please have your staff contact Geoff Kenyon, Deputy Assistant Secretary for Budget and Performance, or Al Stewart, Deputy Assistant Secretary for Operations, at (202) 693-4040

Sincerely,

Bryan Slater
Assistant Secretary for
Administration and Management