

## DCI Guidance Document Executive Order 13950 – Combating Race & Sex Stereotyping

CONTACT YOUR DCI CONSULTANT WITH ANY QUESTIONS.

The Executive Order establishes policy “not to promote race or sex stereotyping or scapegoating” and prohibits this content in trainings, workshops, or related materials. Through the Executive Order, information will be collected on these materials in order for OFCCP to develop guidance documents. Further, a hotline is established to receive complaints. The Executive Order is effective 60 days after the issue date of September 22, 2020.

The Civil Rights Act of 1964 prohibits employment discrimination based on race, color, religion, sex, and national origin by public and private sector employers. Diversity & Inclusion training is still important, or workplaces may be at risk that employees’ conduct will rise to the level of unlawful conduct prohibited by statute.

### **As related to this Executive Order the definitions of race or sex stereotyping and scapegoating:**

“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.”

“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 includes claims “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.”

The following table is designed to assist you as you consider sections of the E.O.

Topic	Subject	Considerations
Requirements for Federal 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.	<ul style="list-style-type: none"> <li>• Adding a disclaimer to your training materials “this training is designed to...”</li> <li>• Revisiting training materials to ensure they are not focusing on one race, ethnicity or sex               <ul style="list-style-type: none"> <li>a. Specifically search for key words of interest mentioned in the Executive Order, such as:</li> </ul> </li> </ul>

<p>From the OMB Memo</p>	<p>Terms including, but not limited to: "critical race theory," "white privilege," "intersectionality," "systemic racism," "positionality," "racial humility," and "unconscious bias." When used in the context of diversity training, these terms may help to identify the type of training prohibited by the E.O.</p>	<p>unconscious, bias, privilege, color blindness, meritocracy, etc.</p> <ul style="list-style-type: none"> <li>• Clearly communicating course expectation and outcomes at the beginning of each training</li> <li>• Re-training the trainers to ensure that all D&amp;I efforts are delivered consistently, and they are not inserting information or biases that are not approved/vetted.</li> <li>• Ensure training is conducted in such a way as to not alienate or shame participants</li> <li>• Determining how your trainers will handle situations that come up from participants that may be race, ethnicity or sex based.</li> </ul>
<p>Notification to labor union or representative of workers</p>	<p>Stating contractor's commitment to 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.</p>	<p>The order does not provide a sample notice to be posted. The Federal Acquisition Regulations (FAR) Council will most likely weigh in on this language. Contractors are not required, at this time, to craft their own notices. DCI recommends holding off until further guidance/language is issued.</p>
<p>Cancellation of Federal Contract</p>	<p>Noncompliance could result in loss of contract.</p>	<p>As with other Executive Orders that have this statement, it is unlikely that a contractor would lose a contract for violation of this Executive Order unless the contractor's actions were found to be malicious and discriminatory.</p>
<p>Subcontracts and Purchase Orders</p>	<p>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.</p>	<p>No regulatory language has been created by FAR. DCI recommends holding off until further guidance/language is issued.</p>
<p>OFCCP complaint hotline</p>	<p>The DOL is directed, through the 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</p>	<p>OFCCP has set up a <a href="#">hotline</a> to receive complaints by phone and email regarding training programs under the new Executive Order. The hotline email and phone number has been added to the contact us page that previously existed. No recommended guidance here</p>

	utilizing such training programs in violation of the contractor's obligations under those orders.	other than to ensure that your employees and training staff are aware of internal complaint processes to help address issues. Hopefully, this may allow for any grievances to be handled internally before someone would resort to using the agency hotline number.
Request for copies of training	<p>The "Request for Information; Race and Sex Stereotyping and Scapegoating" RIN 1250-ZA01 was issued on 10/22/2020 and states specifically:</p> <p><u>Voluntary Compliance for Employers</u> Federal contractors and subcontractors questioning whether their workplace trainings, workshops, or similar programs are compliant with Executive Order 13950 or Executive Order 11246 <b>are encouraged to voluntarily submit information and materials in response to this request for information.</b> OFCCP will provide compliance assistance as requested to Federal contractors and subcontractors that voluntarily submit such information or materials.</p> <p>Materials should be submitted by December 1, 2020.</p>	<p>Remember, this RFI is <b>100% voluntary and our informal survey of clients suggest that most clients will not be submitting information.</b> DCI strongly advises our clients to have a conversation with leadership and legal to understand the potential risk associated with voluntarily submitting training and other documents as requested by OFCCP. It is important to note that there is no guaranteed "safe harbor" provision when submitting information and it could in fact lead to OFCCP initiating enforcement proceedings. Clients should carefully evaluate the pros and cons of responding to the RFI.</p>
Federal Grants	Federal grant monies may not be used to promote the types of diversity concepts outlined in the order.	Contractors should review where grant monies are spent as it relates to training. If training is included in these monies, contractors should review training materials.
Government Agencies	Should continue all training that will foster a workplace that is respectful of all employees – will be overseen by OMB.	Does not apply to Federal Contractors – government agency specific.
Information stated by Craig Leen		OFCCP has recently mentioned that any D&I goals that are separate from the AAP goal should be calculated based on availability and should not be "arbitrary"

		<p>percentages. They state that AAP and D&amp;I professionals should work together to ensure that these goals are not perceived as quotas.</p> <p>OFCCP has said that contractors who tie D&amp;I goals to performance and/or compensation should use caution that goals do not turn into quotas.</p> <p>DCI recommends that performance measurements follow Title VII and EO 11246 by not requiring set-asides, preferences, or quotas. Also, it is recommended to have legal review the language in any public statements or disclosures so as not to draw unnecessary attention to your program.</p> <p>This information has been mentioned in various informal meetings with the OFCCP and has not been put in writing by the Agency.</p>
<p>Statement from the Secretary of Labor</p>		<p><i>“I should be clear about what the President’s new Order does not do. It does not prohibit workplace training about non-discrimination and equal opportunity—that training is important, the Labor Department encourages it, and in some instances we require it. Nor does the Order prohibit the diversity training offered by countless American employers; training that, like my remarks today, emphasizes the importance of recognizing the value and worth of people of all races and creeds. American employers should value diversity and take extra strides to assure opportunity for those who in the past have been denied it—although they must do so in a way that does not discriminate against others based on race, ethnicity, or other protected characteristics. Finally, the President’s Order does not prohibit trainings about pre-conceptions or biases that people may have—regardless of their</i></p>

		<i>race or sex—about people who are different, and which could cause slights or even discrimination that’s not intended. What the Order does prohibit, though, is instruction in which federal contractors tell workers that because of their particular race or sex, they are racist, morally culpable, or less worthy of being heard.”</i>
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## Resources

- [Executive Order 13950](#)
- [OFCCP Landing Page](#)
- [EO 13950 FAQs](#)
- Hotline Information:
  - Email: [OFCCPComplaintHotline@dol.gov](mailto:OFCCPComplaintHotline@dol.gov)
  - (202) 343-2008

**This document will be revised and updated as new information becomes available.**