



Billing Code 4510-45

**DEPARTMENT OF LABOR**

**Office of Federal Contract Compliance Programs**

**RIN 1250-ZA01**

**Request for Information; Race and Sex Stereotyping and Scapegoating**

**AGENCY: Office of Federal Contract Compliance Programs**

**ACTION: Request for Information**

**SUMMARY:** The Office of Federal Contract Compliance Programs (OFCCP) at the Department of Labor seeks comments, information, and materials from the public relating to workplace trainings that involve race or sex stereotyping or scapegoating. OFCCP protects workers by ensuring that those doing business with the Federal government (known as Federal contractors and subcontractors) do not treat workers differently on the basis of race, sex, or other protected characteristics. Information provided in response to this request will assist OFCCP in that mission. This request for information also provides hotline contact information (202-343-2008 and [OFCCPComplaintHotline@dol.gov](mailto:OFCCPComplaintHotline@dol.gov)) that can be used to confidentially report to the Federal government the unlawful use of racist or sexist training materials.

**DATES:** Submit comments, information, and materials on or before December 1, 2020.

**ADDRESSES:** You may submit comments, information, and materials by any of the following methods:

*Electronic comments:* The Federal eRulemaking portal at [www.regulations.gov](http://www.regulations.gov). Follow the instructions found on that website.

*Mail, Hand Delivery, Courier:* Addressed to Tina Williams, Director, Division of Policy and Program Development, Office of Federal Contract Compliance Programs, 200 Constitution Avenue NW, Room C-3325, Washington, DC 20210.

*Instructions:* Please submit one copy of your submission by only one method. For faster submission, we encourage commenters to submit electronically via [www.regulations.gov](http://www.regulations.gov).

**FOR FURTHER INFORMATION CONTACT:** Tina Williams, Director, Division of Policy and Program Development, Office of Federal Contract Compliance Programs, Room C-3325, 200 Constitution Avenue NW, Washington, DC 20210. Telephone: (202) 693-0103 (voice) or (202) 693-1337 (TTY) (these are not toll-free numbers). Copies of this notice may be obtained in alternative formats (large print, braille, audio recording) upon request by calling the numbers listed above.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Millions of Americans are employed by Federal contractors and subcontractors.<sup>1</sup> These employers have certain obligations to their employees under a presidential directive known as Executive Order 11246. That order requires Federal contractors not to discriminate in employment and to take affirmative action to ensure equal opportunity without regard to race, sex, and other protected characteristics. OFCCP ensures Federal contractors uphold their nondiscrimination and affirmative action obligations to their employees.

Relatedly, on September 22, 2020, President Donald J. Trump signed Executive Order 13950, titled Combating Race and Sex Stereotyping.<sup>2</sup> Executive Order 13950 established that it

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<sup>1</sup> For purposes of this request for information, “contractor” and “subcontractor” are used interchangeably.

<sup>2</sup> 85 Fed. Reg. 60683.

is “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 further stated that “Federal contractors will not be permitted to inculcate such views in their employees” through workplace training.<sup>3</sup> The order notes that materials teaching that men and members of certain races are inherently sexist and racist have recently appeared in workplace diversity trainings across the country. Through this request for information, the Department invites the public to provide information or materials concerning any workplace trainings of Federal contractors that involve such stereotyping or scapegoating. Please note that 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.

As used in this request for information, “*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.”<sup>4</sup> “*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.”<sup>5</sup>

Executive Order 13950 clarifies that workplace trainings that promote the following concepts qualify as unlawful race or sex stereotyping or scapegoating:

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<sup>3</sup> *Id.* at 60685. Trainings that teach race or sex stereotyping or race or sex scapegoating may also violate Executive Order 11246, which forbids Federal contractors and subcontractors from discriminating on the basis of race or sex in employment.

<sup>4</sup> *Id.* at 60685.

<sup>5</sup> *Id.* at 60685.

- (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.

Examples of impermissible scapegoating or stereotyping include training materials stating “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.’”<sup>6</sup>

To gain a better understanding regarding potentially unlawful training materials that are being used by Federal contractors and subcontractors, President Trump instructed the Director of OFCCP to request information from these contractors and subcontractors and their employees

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<sup>6</sup> *Id.* at 60684.

regarding the trainings that have been provided.<sup>7</sup> The President further 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.”<sup>8</sup> This request for information is being published in response to the President’s directives. A purpose of this request for information is to obtain information to formulate OFCCP programming and compliance assistance related to Executive Order 13950.

## **II. Types of Comments, Information, and Materials Requested**

OFCCP requests 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.<sup>9</sup>

You may provide various other types of materials, such as PowerPoints, photographs, videos, handwritten notes, or printed handouts. OFCCP welcomes all forms of media and data that have in recent years been used, or that may soon be used, in both voluntary and mandatory trainings, workshops, or similar programming.

**You do not need to provide a response for every category number.** In submitting a response, you are encouraged (but not required) to note the specific sections of materials (such as page numbers or section headings) that you believe fit within a category number listed below.

You should provide responses reasonably related to this request for information. Materials may be submitted anonymously. However, any materials submitted in response to this request for information may be subject to public disclosure, including any personal information provided. You should not provide information or materials prohibited by law from disclosure

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<sup>7</sup> *Id.* at 60686.

<sup>8</sup> *Id.*

<sup>9</sup> Other stakeholders are invited to submit comments as well.

under a valid confidentiality agreement, information or materials that are trade secrets, information or materials that are copyrighted, or information or materials that contain individual medical information or personally identifiable information.

OFCCP seeks information and materials concerning any or all of the following categories, if applicable:

1. Workplace trainings that promote, or could be reasonably interpreted to promote, race or sex stereotyping.
2. Workplace trainings that promote, or could be reasonably interpreted to promote, race or sex scapegoating.
3. The *duration* of any workplace training identified in categories 1 or 2.
4. The *frequency* of any workplace training identified in categories 1 or 2.
5. The *expense or costs associated with* any workplace training identified in categories 1 or 2.

OFCCP additionally requests input on any or all of the following questions, if applicable:

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

10. Approximately what portion of your company's annual optional training relates to diversity?

### **III. How to Confidentially Report Information Through OFCCP's New Hotline**

OFCCP has created an e-mail and telephone hotline to report potentially non-compliant workplace training materials. Executive Order 13950 directed the Department of Labor, through OFCCP, "to establish a hotline and investigate complaints received under both [Executive Order 13950] as well as Executive Order 11246 alleging that a Federal contractor is utilizing . . . training programs in violation of the contractor's obligations under those orders."<sup>10</sup> Executive Order 13950 further directed the Department of Labor to "take appropriate enforcement action and provide remedial relief, as appropriate."<sup>11</sup>

Employees and other concerned members of the public are encouraged to report potentially unlawful training materials by calling (202) 343-2008 or emailing [OFCCPComplaintHotline@dol.gov](mailto:OFCCPComplaintHotline@dol.gov). To the fullest extent permissible by law, OFCCP will protect the confidentiality of those who submit information through the hotline.

Unlike hotline communications, responses to this request for information may become a matter of public record and may be subject to public disclosure as described above. Employees and other concerned members of the public who wish to confidentially report potentially non-compliant information or materials should do so through the hotline information provided above.

### **IV. Voluntary Compliance for Employers**

Federal contractors and subcontractors questioning whether their workplace trainings, workshops, or similar programs are compliant with Executive Order 13950 or Executive Order

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<sup>10</sup> *Id.* at 60686.

<sup>11</sup> *Id.*

11246 are encouraged to voluntarily submit information and materials in response to this request for information. OFCCP will provide compliance assistance as requested to Federal contractors and subcontractors that voluntarily submit such information or materials.

OFCCP will, consistent with law, exercise its enforcement discretion and not take enforcement action against Federal contractors and subcontractors that voluntarily submit information or materials in response to this request for information, as it relates to submitted information or materials and potential non-compliance with Executive Orders 13950 or 11246, provided that such contractor or subcontractor promptly comes into compliance with the Executive Orders as directed by OFCCP. If a Federal contractor or subcontractor who voluntarily submits information or materials in response to this request for information is determined by OFCCP to have non-compliant materials, and the contractor or subcontractor refuses to correct the issue after compliance assistance is provided, OFCCP may take enforcement action against the contractor or subcontractor if OFCCP later receives the contractor or subcontractor's materials through a separate source, such as a neutrally scheduled audit, in connection with a complaint, or if submitted by an employee in response to this RFI. OFCCP will keep information and materials submitted under this process confidential under Exemption 4 of the Freedom of Information Act to the maximum extent permitted by law, unless disclosure is necessary and appropriate in Federal Government-initiated proceedings.

A Federal contractor or subcontractor may opt for the above-described enforcement discretion only if the relevant information or materials are submitted to OFCCP by one of the contractor's or subcontractor's executives, owners, or legal representatives with actual authority to legally bind the contractor or subcontractor in agreements with the United States Government. Should a qualifying executive, owner, or legal representative of the contractor or subcontractor

submit information or materials on behalf of the contractor or subcontractor as requested in this request for information, the fact that a worker employed by the contractor or subcontractor may have also submitted the same (or substantially the same) information or materials to OFCCP, or submitted a complaint based on such information or materials, will not disqualify the contractor or subcontractor from choosing the types of compliance assistance and enforcement discretion described herein. But as noted above, OFCCP reserves the right to take enforcement action as to information or materials submitted by employees in response to this RFI if the contractor or subcontractor refuses to correct non-compliant materials after receiving compliance assistance.

Regarding all other Federal contractors and subcontractors, there are no adverse legal consequences for choosing not to participate in this request for information. This request for information is strictly voluntary; it simply offers Federal contractors and subcontractors an opportunity in the exercise of OFCCP's enforcement discretion to come into compliance with their legal obligations to the extent they have concerns.

## **V. Conclusion**

Pursuant to Executive Order 13950, OFCCP invites Federal contractors, Federal subcontractors, and employees of Federal contractors and subcontractors to submit comments, information, and materials as described above. This request for information will enable OFCCP to better combat race and sex stereotyping and scapegoating within the contractor community.

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Craig E. Leen

Director, OFCCP

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