



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Office of Inspector General

Via Email

January 14, 2021

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

Dear Director Vought:

This report communicates the results of the Federal Trade Commission (FTC) Office of Inspector General's (OIG) review of the FTC's compliance with Executive Order (EO) 13950, *Combating Race and Sex Stereotyping*.

Background

On September 22, 2020, the President issued Executive Order 13950 (EO), *Combating Race and Sex Stereotyping*. The EO states:

[I]t 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.¹

In order to achieve its goals, the EO requires Federal agencies to take several actions, including: (1) making sure that training provided to employees does not include "divisive concepts"²; 2) assigning a political appointee to ensure agency compliance with the EO; (3) submitting to the Office of Personnel Management (OPM) for approval any planned training on diversity and inclusion prior to

¹ EO at § 1.

² “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.” EO at § 2(a).

providing such training; (4) reporting to the Office of Management and Budget (OMB) within 90 days of the EO all spending in Fiscal Year 2020 on Federal employee training programs relating to diversity or inclusion; and (5) inserting into every new contract language that prohibits contractors from using any “workplace training” with divisive concepts.

The EO also directs the “agency head . . . to 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. . . .”³

Subsequent to the EO, the Office of Management and Budget (“OMB”) and the Office of Personnel Management issued implementation guidance and additional requirements to agencies.⁴

On November 17, 2020, in accordance with the EO, FTC Chairman Joseph Simons (the Chairman) requested that Inspector General (IG) Andrew Katsaros submit a report to OMB assessing the agency’s compliance with the EO. The OIG is submitting this report to OMB in response to the Chairman’s request.

Objective, Scope, and Methodology

The OIG’s objective was to review and assess agency compliance with the EO’s requirements.

The OIG reviewed the following relevant criteria and guidance:

- EO 13950 (September 22, 2020);
- OMB Memorandum M-20-34, *Training in the 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); and
- OPM Memorandum, *Mandatory Review of Employee Training under E.O. 13950* (October 2, 2020).

To assess FTC compliance, the OIG:

- (1) Reviewed FTC records and the FTC’s responses to a detailed questionnaire, prepared by the OIG, related to the FTC’s compliance with the EO’s relevant sections;
- (2) Requested that the FTC provide the OIG with a copy of its submissions to OPM and OMB pursuant to the EO; and
- (3) Discussed the FTC’s compliance with the EO with the FTC Office of Human Capital Management and the Office of General Counsel.

³ EO at § 6(c)(ii).

⁴ See OPM Memorandum, *Mandatory Review of Employee Training under E.O. 13950* September 22, 2020 (October 2, 2020); OMB Memorandum M-20-37, *Ending Employee Trainings that Use Divisive Propaganda to Undermine the Principle of Fair and Equal Treatment for All* (Sept. 28, 2020).

Results

The OIG found that the FTC is in the process of becoming fully compliant with the EO. Table 1 below shows that, of the seven requirements reviewed,⁵ the FTC has complied with six (including one it has put on hold) and is making progress towards complying with one. Table 2 below shows that the FTC also has complied with OMB Memo M-20-37's two additional requirements.

Table 1. Executive Order 13950 Requirements

| EO Requirement | Due Date | Status | Notes |
|---|----------|----------------------|--|
| Section 4(a)- Incorporate EO language into new contracts | 11/21/20 | Complete/ on hold | Between Section 4's effective date (November 21, 2020) and December 22, 2020, the FTC entered into one contract and included Section 4's required language into the contract. Following the nationwide injunction on the implementation of Section 4 on December 22, 2020, <i>see Santa Cruz Lesbian and Gay Cnty. Ctr. v. Trump</i> , 20-cv-07741-BLF, 2020 WL 7640460 (N.D. Cal. Dec. 22, 2020), the FTC paused implementation of Section 4 and is not including Section 4's required language in any new contracts. |
| Section 6(a) - Ensure that all training to employees does not include divisive concepts | None | N/A | The FTC has not provided any training on diversity and inclusion concepts since September 22, 2020. |
| Section 6(c)(i) – Incorporate the requirements of the EO into agency operations | None | Complete | On November 17, 2020, the Chairman issued an order incorporating the EO into FTC operations. |
| Section 6(c)(ii) – Request the Inspector General review and assess agency compliance with the EO | None | Complete | |
| Section 6(c)(iii) - Assign a political appointee responsible for ensuring compliance with the EO | None | Complete | In the Chairman's November 17, 2020 order, the Chairman assigned General Counsel Alden Abbott as the political appointee responsible for ensuring compliance with the EO. |
| Section 7(a) – Submit planned diversity and inclusion trainings to OPM for approval | None | In Progress | The agency is in the process of identifying and reviewing all diversity and inclusion training programs for submission. |
| Section 7(c) – Submit report to OMB about Fiscal Year 2020 spending on Federal employee training programs relating to | 12/21/20 | Complete | The FTC submitted its report to OMB, via Max.gov, on December 21, 2020. |

⁵ Sections 1 ("Purpose"), 2 ("Definitions"), 9 ("Effective Date"), and 10 ("General Provisions") do not impose any requirements on agencies. Sections 3 ("Requirements for the United States Uniformed Services"), 5 ("Federal Grants"), 8 ("Title VII Guidance") do not apply to the FTC. Notably, Section 5 ("Federal Grants") does not apply to the FTC as the FTC does not have grant making authority.

diversity or inclusion

Table 2: OMB Memorandum M-20-37 Requirements

| OMB Requirement | Due Date | Status | Notes |
|---|----------|----------|--|
| Align public-facing information with the requirements for training Federal employees | None | Complete | |
| Encourage employees to report to the OIG any agency sponsored training session that violates the EO | None | Complete | The FTC notified employees of this right on December 4, 2020, via the FTC's daily internal newsletter. |

We appreciate the cooperation and courtesies extended to us by the Human Capital Management Office and the General Counsel's Office during the course of this review. If you have any questions or concerns, please contact me at (202) 326-3527.

Sincerely,



Andrew Katsaros
Inspector General