



Review of NARA's Progress in Implementing Executive
Order 13950, Combating Race and Sex Stereotyping

December 30, 2020

OIG Report No. 21-R-05



December 30, 2020

TO: David S. Ferriero
Archivist of the United States

FROM: James Springs *James Springs*
Inspector General

SUBJECT: *Review of NARA's Progress in Implementing Executive Order (EO) 13950, Combating Race and Sex*
OIG Report No. 21-R-05

Attached for your information is our final report, *Review of NARA's Progress in Implementing Executive Order 13950, Combating Race and Sex*. The Office of Inspector General (OIG) completed this review of the National Archives & Records Administration's (NARA) compliance with the requirements of EO 13950 on Combating Race and Sex Stereotyping.

Due to the NARA's general compliance with the applicable provisions of the EO, the OIG does not have any recommendations in this report. In accordance with the Archivist's request and Section 6 (c)(ii) of the EO, the OIG is transmitting a copy of this report to the Office of Management and Budget. In the future, the OIG may perform follow-up on implementation of the EO.

As with all OIG products, we determine what information is publically posted on our website from the attached report. Consistent with our responsibility under the *Inspector General Act, as amended*, we may provide copies of our report to congressional committees with oversight responsibility over NARA.

We appreciate the cooperation and assistance NARA extended to us during the review. Please contact me or Jewel Butler, Assistant Inspector General for Audits, with any questions.

cc: Debra Wall, Deputy Archivist of the United States
Micah Cheatham, Chief of Management and Administration
William Bosanko, Chief Operating Officer
LaVerne Fields, Chief Acquisition Officer
Tasha Ford, Acting Executive Secretariat Director
Erica Pearson, Director, Office of Equal Employment Opportunity
Kimm Richards, Accountability
United States House Committee on Oversight and Government Reform
Senate Homeland Security and Governmental Affairs Committee
Office of Management and Budget

Table of Contents

Review Summary	3
Background.....	4
Objectives, Scope, Methodology	6
Review Results.....	7
Appendix A – Acronyms	10
Appendix B – Report Distribution List.....	11

Review Summary

Review of NARA's Progress in Implementing Executive Order 13950, Combating Race and Sex

OIG Report No. 21 R 05

December 30, 2020

Objective

The objective of this review was to assess the National Archives & Records Administration's (NARA's) compliance with the requirements of Executive Order (EO) 13950 on Combating Race and Sex Stereotyping.

Background

On September 22, 2020, the White House issued EO 13950, Combating Race and Sex Stereotyping, 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." In conjunction with requirements stated in EO 13950 agency heads are directed to ensure compliance with the EO, to include requesting 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 EO 13950, in the form of a report submitted to the Office of Management and Budget (OMB).

What Did We Find?

On October 23, 2020, the Office of Inspector General (OIG) received a request from the Archivist of the United States, (the Archivist) to conduct a review. In response to this request, the OIG initiated this review to assess NARA's compliance with the requirements of EO 13950. Based on our limited review, we found NARA has generally complied with the applicable requirements of EO 13950. Specifically, NARA:

1. Issued guidance requiring contracting officers to include the provisions required by Section 4 of the EO in all solicitations issued on or after November 21, 2020 and in any resultant contracts, and to amend solicitations issued prior to November 21, 2020 where the resultant contract award is expected to occur on or after November 21, 2020.
2. Reviewed its grant programs and identified all programs receiving Federal grants and cooperative agreements; and developed language requiring the recipient to certify that it will not use Federal funds to promote the concepts listed in Section 5 of the EO. However, the Agency did not submit the grant program report to OMB by November 21, 2020 as required by Section 5 of the EO.
3. Issued an order incorporating the requirements of the EO into NARA operations.
4. Requested the 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 EO in the form of a report submitted to OMB.
5. Appointed the Archivist as the political appointee for ensuring NARA compliance.
6. Submitted applicable diversity or inclusion training modules to Office of Personnel Management (OPM) for review and approval.
7. Submitted its Fiscal Year 2020 Spending on Federal Employee Training related to Diversity or Inclusion to the OMB.

Due to compliance with the selected provisions of the Executive Order, the OIG does not have any recommendations in this report.

Background

On September 22, 2020, the White House issued Executive Order (EO) 13950, Combating Race and Sex Stereotyping 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.” Similarly, Office of Management and Budget (OMB) Memorandum M-20-37, states, “the [EO] encourages diversity and inclusion efforts consistent with principles of fair and equal treatment, and it defines the sort of divisive trainings the Administration seeks to end.¹ In accordance with EO 13950 the United States Uniformed Services, Government contractors, Federal grantees, and Federal agencies, are required to prohibit trainings that include divisive concepts,² race or sex stereotyping³ and race or sex scapegoating.⁴ The EO details specific requirements for the previously mentioned stakeholders. Section 6(a)(i), Agency Requirements, states “the head of each agency shall use his or her authority...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...to agency employees do not teach, advocate, act upon, or promote in any training to agency employees any of the divisive concepts. Section 6(c) further outlines, each agency head shall:

¹ 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, describes steps [to] help ensure that all Federal workers are treated with the individual respect they deserve and that the Federal government continues to foster a workplace of respect for all.

² EO 13950, Section 2(a) defines “Divisive concepts” as 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.

³ EO 13950, Section 2(b) defines “race or sex stereotyping” as 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.

⁴ EO 13950, Section 2(c) defines “race or sex scapegoating” as 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.

- 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;” and
- 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.”

Although Section 6, Agency Requirements, of EO 13950 designates actions the agency should take in ensuring compliance with the EO, there are additional agency requirements detailed in other sections of the EO:

- Section 4(a), Requirement for Government Contractors, states, “all Government contracting agencies shall include in every Government contract hereafter ...provisions [enumerated in the EO].
- Section 5, Requirements for Federal Grants, states, “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 grantee to meet EO requirements. It also requires, “within 60 days of the date of [EO 13950], 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.”
- Section 7(a), OMB and Office of Personnel Management (OPM) Review of Agency Training, requires that “all training programs for agency employees relating to diversity or inclusion shall, before being used, be reviewed by OPM for compliance.”
- Section 7(c), OMB and OPM Review of Agency Training, states “within 90 days of the date of [EO13950], 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.”

Objectives, Scope, Methodology

The objective of this review was to assess NARA's compliance with the requirements of Executive Order 13950 on Combating Race and Sex Stereotyping. We conducted the review at NARA's headquarters in College Park, Maryland from October 2020 through December 2020. The scope of this review included the Agency's progress under the EO from September 2020 through December 2020.

We took the following steps to accomplish the objective:

- Identified and reviewed the EO and applicable guidance.
- Identified and reviewed applicable internal NARA policies and procedures.
- Interviewed agency personnel from the Executive Secretariat, the National Historical Publications and Records Commission (NHPRC), the Office of Acquisitions, and the Office of Equal Employment Opportunity.
- Requested and received documentation related to the NARA's implementation of requirements in the EO.
- Requested all contracts awarded by NARA from November 21, 2020 through December 4, 2020 and determined whether those contracts included required provisions in the EO.

The review was conducted in accordance with the OIG's policies and procedures. It was completed by Alicia McNair, Senior Program Auditor.

Review Results

Based on our limited review, we found NARA has generally complied with the applicable Requirements of EO 13950. Specifically:

NARA Issued Guidance to Ensure Compliance with Section 4 of EO 13950

On November 30, 2020, NARA's Office of Acquisitions issued a Procurement Class Deviation (PCD) to provide a class deviation from the Federal Acquisition Regulation (FAR) to implement Section 4 of EO 13950, Combating Race and Sex Stereotyping. The PCD required all contracting officers to:

- Include the relevant FAR clause in all solicitations issued on or after November 21, 2020 and in any resultant contracts that will include the clause at FAR 52.222-26, Equal Opportunity, or its Alternate I. This includes solicitations below the simplified acquisition threshold and solicitations for the acquisition of commercial items under FAR part 12; and
- Amend solicitations issued prior to November 21, 2020 where the resultant contract award is expected to occur on or after November 21, 2020 to include the attached clause, if the contract is contemplated to include the clause at FAR 52.222-26, Equal Opportunity, or its Alternate I. This includes solicitations below the simplified acquisition threshold and solicitations for the acquisition of commercial items under FAR part 12.

NARA Partially Addressed the Requirements of Section 5 of EO 13950

The NHPRC⁵ reviewed its grant programs and identified all programs for which the agency may, as a condition of receiving such grant, require the grantee to meet EO requirements. Additionally, NHPRC in collaboration with the Office of General Counsel, developed language to be provided to recipients of NHPRC grant and cooperative agreement funding and posted it online, stating, "In accordance with Executive Order 13950, "Combating Sex and Race Stereotyping," issued on September 22, 2020, as well as the related OMB Memorandum M-20-37 issued on September 28, 2020, a grantee receiving funding from the NHPRC must certify that it will not use any funds provided by the NHPRC to engage in or contract for trainings of the sort prohibited by the Executive Order." On December 10, 2020 the Agency posted this statement on its public-facing website.

⁵ The National Historical Publications and Records Commission (NHPRC), is a statutory body affiliated with NARA and supports a wide range of activities to preserve, publish, and encourage the use of documentary sources, created in every medium ranging from quill pen to computer, relating to the history of the United States. <https://www.archives.gov/nhprc/about>

Furthermore, although NARA submitted its grant program report to OMB on December 18, 2020, the Agency failed to do so by November 21, 2020, as stated in Section 5 of EO 13950.

The Archivist Satisfied the Requirements of Section 6 (c)(i) of EO 13950 by Incorporating the EO Requirements into Agency Operations.

On October 15, 2020, the Archivist issued an agency-wide notice,⁶ “requiring NARA’s compliance with all provisions of EO 13950, including all requirements related to government contracts, grants, and diversity and inclusion training.” The notice states, the Executive Secretariat will coordinate these efforts on [the Archivist’s] behalf, assigning to the appropriate offices their responsibilities under [EO 13950] and ensuring that [he is] apprised of their progress.” The notice adds “Executive Secretariat will send all detailed guidance NARA receives from the Office of Management and Budget (OMB) and the Office of Personnel Management (OPM) to the appropriate offices to ensure NARA’s timely and full compliance with these requirements.”

This notice also advises, “the Equal Employment Opportunity Office will partner with the appropriate offices to ensure NARA discontinues all diversity and inclusion training until authorized to resume.” In addition, it stated “all employees should also ensure that if they were scheduled or planned to attend any diversity and inclusion training outside of NARA in their official capacity, that they cancel such training at this time.”

On December 9, 2020, the Archivist issued another agency-wide notice,⁷ which provided guidance that “staff training requests for conference sessions that include diversity and inclusion–related content require validation prior to approval.” The agency-wide notice states, “Managers and Supervisors must receive written validation from the outside source that they have received OPM approval before they approve requests for training or conference attendance.”

The Archivist Assigned a Senior Political Appointee and Requested the OIG Review the Department’s Compliance in Accordance with Section 6(c)(ii) and 6(c)(iii) of EO 13950

According to the October 15, 2020, agency-wide notice issued by the Archivist, “as the sole political appointee at NARA, I [the Archivist] will retain responsibility for ensuring NARA’s compliance with the requirements of this EO [EO 13950].” Shortly thereafter, on October 23, 2020, the Archivist requested the OIG “thoroughly review and assess by the end of the calendar

⁶ NARA Notice 2021-013, October 15, 2020, Executive Order 13950, Combating Race and Sex Stereotyping

⁷ NARA Notice 2021-042, December 9, 2020, Ensuring Vendor, Professional Association, or Other Outside Training Compliance with Executive Order 13950

year, and not less than annually thereafter, agency compliance with the requirements of this order in the form of a report submitted to OMB.”

NARA Submitted Training Programs Related to Diversity or Inclusion for Review by the OPM in Compliance with Section 7(a) of EO 13950

On December 1, 2020, NARA submitted training programs identified as relating to diversity or inclusion to OPM for review and approval in accordance with Section 7(a) of EO 13950.

NARA Submitted its Fiscal Year 2020 Spending on Federal Employee Training related to Diversity or Inclusion to OMB in Accordance with Section 7(c) of the EO

On December 16, 2020, the agency submitted its Fiscal Year 2020 Spending on Federal Employee Training related to Diversity or Inclusion to the OMB in accordance with Section 7(c) of EO 13950.

Appendix A – Acronyms

EO	Executive Order
FAR	Federal Acquisition Regulation
NARA	National Archives and Records Administration
NHPRC	National Historical Publications and Records Commission
OIG	Office of Inspector General
OMB	Office of Management and Budget
OPM	Office of Personnel Management
PCD	Procurement Class Deviation

Appendix B – Report Distribution List

Archivist of the United States
Deputy Archivist of the United States
Chief Operating Officer
Chief of Management and Administration
Chief Acquisition Officer
Office of Equal Employment Opportunity Director
Executive Secretariat Director
Accountability
Office of Management and Budget

OIG Hotline

To report fraud, waste, or abuse, please contact us:

Electronically: <https://www.archives.gov/oig/referral-form/index.html>

Telephone: 301-837-3500 (Washington, D.C. Metro Area)
1-800-786-2551 (toll-free and outside the Washington, D.C. metro area)

Mail: IG Hotline
NARA
P.O. Box 1821
Hyattsville, MD 20788-0821