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**Information Report: Review of the  
International Boundary and Water  
Commission, United States and Mexico,  
U.S. Section, Compliance With Executive  
Order 13950 on Combating Race and Sex  
Stereotyping**

INFORMATION REPORT

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## Summary of Review

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.”<sup>1</sup> Among other requirements, EO 13950 requires the agency head to take certain steps to ensure agency compliance with the EO, including to “issue an order incorporating the requirements of [the EO] into agency operations[.]”<sup>2</sup> The Office of Inspector General (OIG) conducted this review to determine whether the International Boundary and Water Commission, United States and Mexico, U.S. Section (USIBWC), has taken steps to implement EO 13950 § 6(c).<sup>3</sup>

In its review, OIG found that USIBWC took the necessary steps to comply with EO 13950 § 6(c). Specifically, the USIBWC Commissioner issued an agency order to incorporate requirements of the EO into agency operations and assumed responsibility as the senior political appointee to oversee the implementation of the EO. In addition, the Commissioner’s order directed the Administration Department, to issue subsequent guidance requiring the Commission’s contractors to comply with the EO. Finally, during communication with USIBWC, OIG determined that there was an implied request from the Commissioner to review and assess USIBWC compliance with the EO in the form of a report. Based on USIBWC’s actions, OIG concludes that USIBWC complied with the requirements set forth in EO 13950 § 6(c). In accordance with EO 13950 § 6(c)(ii), OIG is transmitting a copy of this report to the Office of Management and Budget.

## BACKGROUND

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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.” EO 13950 requires Federal agencies, Federal grantees, Federal contractors,

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<sup>1</sup> EO 13950, Combating Race and Sex Stereotyping, September 22, 2020.

<sup>2</sup> EO 13950, September 22, 2020, at § 6(c)(i).

<sup>3</sup> Because EO 13950 requires Offices of Inspectors General to complete a review and report findings to the Office of Management and Budget by the end of the calendar year, OIG’s limited its evaluation in calendar year 2020 to USIBWC’s compliance with § 6(c) of the EO. OIG’s review in calendar year 2021 will be broader in scope and will evaluate USIBWC’s compliance with all provisions of the EO.

and the Uniformed Services to address trainings that include divisive concepts,<sup>4</sup> race or sex stereotyping,<sup>5</sup> and race or sex scapegoating.<sup>6</sup>

The EO directs agencies to include provisions in all government contracts to ensure contractor compliance with the requirements beginning 60 days from the date on which the EO was signed, as applicable.<sup>7</sup> The EO also requires that agencies identify grant programs for which compliance with these requirements may become a condition of receiving an award.<sup>8</sup>

## **Requirements for Agencies**

EO 13950 § 6(a)(i) states that the head of each agency shall ensure that their “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 . . . divisive concepts.” Specifically, each agency head shall:

- i. “issue an order incorporating the [EO requirements] into agency operations, including by making compliance with [the EO] a provision in all agency contracts for diversity training;”<sup>9</sup>

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<sup>4</sup> EO 13950, September 22, 2020, at § 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.”

<sup>5</sup> EO 13950, September 22, 2020, at § 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.”

<sup>6</sup> EO 13950, September 22, 2020, at § 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.”

<sup>7</sup> EO 13950, September 22, 2020, at § 4(a), states that “[e]xcept in contracts exempted in the manner provided by section 204 of [EO] 11246 of September 24, 1965 (Equal Employment Opportunity), as amended, all Government contracting agencies shall include [these provisions] in every Government contract hereafter.” Among other requirements, this section requires the contractor to include provisions of EO 13950 in “every subcontract or purchase order . . . so that such provisions will be binding upon each subcontractor or vendor.”

<sup>8</sup> EO 13950, September 22, 2020, at § 5, states that 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,” meet EO requirements. Further, “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.”

<sup>9</sup> EO 13950, September 22, 2020, at § 6(c)(i).

- 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 [the Office of Management and Budget];”<sup>10</sup> and
- iii. “assign at least one senior political appointee responsibility for ensuring compliance with the requirements” of the EO.<sup>11</sup>

Accordingly, the agency head for USIBWC is the Commissioner, Jayne Harkins. The Office of the Commissioner administers the Equal Employment Opportunity functions of the agency. This office oversees agency policies and practices to ensure compliance with all respective laws, regulations, agency directives, and other requirements.

### **Purpose of the Information Report**

The purpose of this information report is to convey the results of OIG’s review related to determining whether the USIBWC took steps to comply with EO 13950. This information report addresses EO 13950, § 6(c), which requires that the agency head, among other things, “issue an order incorporating the requirements of this [EO] into agency operations, including by making compliance with [the EO] a provision in all agency contracts for diversity training.”<sup>12</sup> OIG conducted this review in accordance with the *Quality Standards for Inspection and Evaluation* as set forth by the Council of the Inspectors General on Integrity and Efficiency in 2012. OIG believes that the evidence obtained provides a reasonable basis for the findings and conclusions presented in this report. In accordance with a reporting provision outlined in EO 13950, OIG has transmitted a copy of this final report to the Office of Management and Budget. Appendix A provides additional details of the purpose, scope, and methodology of this project.

## **RESULTS**

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### **USIBWC Took Necessary Steps To Implement EO 13950 § 6(c)**

OIG found that USIBWC has taken all necessary steps to comply with EO 13950 § 6(c), issued on September 22, 2020. Specifically, the USIBWC Commissioner issued an agency order to incorporate requirements of the EO into agency operations and retained responsibility as the senior political appointee to oversee the implementation of the EO. The Commissioner’s agency order directed the Administration Department to issue subsequent guidance requiring the Commission’s contractors to comply with the EO. Finally, based on the USIBWC response, OIG determined that there was an implied request from the Commissioner to review and assess USIBWC compliance with the EO.

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<sup>10</sup> EO 13950, September 22, 2020, at § 6(c)(ii).

<sup>11</sup> EO 13950, September 22, 2020, at § 6(c)(iii).

<sup>12</sup> EO 13950, September 22, 2020, at § 6(c)(i).

***The USIBWC Commissioner Satisfied § 6(c)(i) of EO 13950 by Incorporating the EO Requirements Into Agency Operations***

On October 15, 2020, the USIBWC Commissioner issued an order to the Chief of the Administration Department<sup>13</sup> directing the agency to include language required by EO 13950 in all government contracts executed on or after November 21, 2020. The language to be included in future contracts is taken verbatim from the EO and directs contractors not to provide training that promotes race or sex stereotyping or scapegoating. Additionally, in a memorandum to OIG on October 16, 2020, USIBWC stated that “Pursuant to EO 13950, USIBWC acknowledges and will ensure that agency employees, while on duty, will not receive training on prohibited “divisive concepts” listed in section 2(a) of the Executive Order.”<sup>14</sup>

Regarding grants, according to a USIBWC official, “USIBWC has not been given authority to provide for grants to others, and has never done so, and will not be engaging in providing grants in the future without express authorization to do so.”<sup>15</sup>

***The USIBWC Commissioner Has Accepted Responsibility For, and Requested an OIG Evaluation of EO 13950, in Accordance With § 6(c)(ii) and § 6(c)(iii)***

On October 16, 2020, USIBWC advised OIG of early actions taken by the Commissioner to comply with EO 13950. OIG interpreted this communication as an implied request for OIG to review and assess USIBWC compliance with the requirements of this order by the end of the calendar year, and not less than annually thereafter.

Additionally, on November 13, 2020, USIBWC notified OIG that the Commissioner was the sole political appointee of the Commission and, as such, would be the senior political appointee responsible for ensuring compliance with the requirements of EO 13950.

Based on USIBWC’s actions, OIG concludes that USIBWC complied with the requirements set forth in EO 13950 § 6(c). In accordance with EO 13950 § 6(c)(ii), OIG is transmitting a copy of this report to the Office of Management and Budget.

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<sup>13</sup> The Administration Department is headed by the Chief Administrative Officer. It provides administrative support to all agency functions through its four Divisions: Acquisitions, Budget, Finance and Accounting, and Information Management.

<sup>14</sup> See EO 13950, September 22, 2020, at § 2(a).

<sup>15</sup> Further, in the memorandum to OIG, the USIBWC Commissioner explained that no funding was spent in FY 2020 or is proposed to be spent in FY 2021 on diversity and inclusion training. Therefore, OIG determined no other specific requirements of the EO apply to the USIBWC.

## APPENDIX A: PURPOSE, SCOPE, AND METHODOLOGY

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On September 22, 2020, the White House issued Executive Order (EO) 13950, Combating Race and Sex Stereotyping. The Office of Inspector General (OIG) conducted this review to determine whether the International Boundary and Water Commission, United States and Mexico, U.S. Section (USIBWC) has taken steps to implement the requirements in § 6(c) of EO 13950.<sup>1</sup> That section requires the agency head, among other things, to “issue an order incorporating the requirements of this [EO] into agency operations, including by making compliance with [the EO] a provision in all agency contracts for diversity training.”<sup>2</sup>

OIG conducted this review from November to December 2020 in the Washington, DC, metropolitan area. Specifically, OIG conducted this review in accordance with the *Quality Standards for Inspection and Evaluation* as set forth by the Council of the Inspectors General on Integrity and Efficiency in 2012. These standards require that OIG plan and perform a review to obtain sufficient, appropriate evidence to provide a reasonable basis for the findings and conclusions based on the review objective. OIG believes that the evidence obtained provides a reasonable basis for its findings and conclusions based on the objective.

To perform this project, OIG reviewed the applicable EO, and related memoranda published by the Office of Personnel Management and the Office of Management and Budget. OIG held phone conferences and exchanged email communication with officials from the USIBWC. Furthermore, OIG reviewed two USIBWC memoranda related to Commission implementation of EO 13950 § 6(c).

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<sup>1</sup> Because EO 13950 requires Offices of Inspectors General to complete a review and report findings to the Office of Management and Budget by the end of the calendar year, OIG’s limited its evaluation in calendar year 2020 to USIBWC’s compliance with § 6(c) of the EO. OIG’s review in calendar year 2021 will be broader in scope and will evaluate USIBWC’s compliance with all provisions of the EO.

<sup>2</sup> EO 13950, Combating Race and Sex Stereotyping, September 22, 2020, § 6(c)(i).

## ABBREVIATIONS

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EO	Executive Order
OIG	Office of Inspector General
USIBWC	International Boundary and Water Commission, United States and Mexico, U.S. Section



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