



OFFICE OF INSPECTOR GENERAL
U.S. Department of Energy

INSPECTION SPECIAL REPORT

DOE-OIG-21-10

December 2020

**DEPARTMENT OF ENERGY'S
COMPLIANCE WITH
EXECUTIVE ORDER 13950,
COMBATING RACE AND SEX
STEREOTYPING**



Department of Energy
Washington, DC 20585

December 29, 2020

MEMORANDUM FOR THE DIRECTOR, OFFICE OF ECONOMIC IMPACT AND
DIVERSITY AND THE ACTING ADMINISTRATOR, NATIONAL
NUCLEAR SECURITY ADMINISTRATION

Deborah Thomas

FROM: Deborah M. Thomas
Acting Assistant Inspector General
for Inspections, Intelligence Oversight,
and Special Projects
Office of Inspector General

SUBJECT: INFORMATION: Inspection Special Report on the “Department of Energy’s Compliance with Executive Order 13950, *Combating Race and Sex Stereotyping*”

BACKGROUND

On September 22, 2020, President Donald J. Trump issued Executive Order 13950, *Combating Race and Sex Stereotyping*. The Executive Order requires that Federal agencies, Federal grantees, Federal contractors, and the Uniformed Services take action to combat divisive concepts, race or sex stereotyping, and race or sex scapegoating. Additionally, the Executive Order requires each agency head to request that the agency’s Office of Inspector General thoroughly review and assess compliance with the Executive Order no later than December 31, 2020, and annually thereafter, and report to the Office of Management and Budget.

The Department of Energy requested the Office of Inspector General perform this review. As such, we initiated this inspection to review and assess the Department’s compliance with the requirements of Executive Order 13950.

RESULTS OF REVIEW

We found that the Department’s Office of Economic Impact and Diversity (Economic Impact), working in conjunction with the Office of Management, and the National Nuclear Security Administration, had made progress implementing the Executive Order. Specifically, the Department had complied with Executive Order agency requirements by assigning a senior political appointee in Economic Impact to be responsible for ensuring compliance with the requirements of the Executive Order. Also, the senior political appointee appropriately requested

that the Office of Inspector General review the Department's compliance with the Executive Order. Finally, on November 24, 2020, the Department's Deputy Secretary issued a memorandum to the Heads of Departmental elements stating that the Department must comply with the Executive Order. We further noted that the Department had taken steps to comply with the Executive Order in the areas of contracts and grants, spending, and training.

Contracts and Grants

The Executive Order, Section 4, requires that most Government contracts entered into 60 days after the date of the Executive Order include a clause requiring compliance with the Executive Order. According to the Department, it developed a contract clause following this requirement and incorporated it into four separate contracts issued on or after November 21, 2020. We tested one of four contracts and found that the clause was included. The clause we reviewed required, among other things, that the contractor comply with requirements regarding informing collective bargaining units and labor unions of the contractor's commitment to act in accordance with the Executive Order.

In accordance with the Executive Order, Section 5, by November 21, 2020, the Office of Management submitted to the Office of Management and Budget a listing of grant programs that may require the recipients to certify that it will not use Federal funds to promote the divisive concepts identified in the Executive Order.

Spending

The Executive Order, Section 7, required that each agency shall report to the Office of Management and Budget, no later than December 21, 2020, all spending in fiscal year 2020 on Federal employee training programs relating to diversity or inclusion, whether conducted internally or by contractors. The Deputy Secretary issued a data call to Heads of Departmental elements for this information. Economic Impact provided a response to the Office of Management and Budget on December 21, 2020, and learned that the data must be submitted manually into a data collection tool, which it is in the process of doing.¹

Training

The Executive Order, Section 7, requires all training programs for agency employees relating to diversity or inclusion be reviewed by the Office of Personnel Management (OPM) for compliance with Executive Order, Section 6, which calls for specific agency and OPM steps designed to implement the intent of the Executive Order.

Economic Impact stated that since the issuance of the Executive Order, its office was not aware of any diversity and inclusion-related training that was made available to Federal employees without being submitted to OPM for review prior to administration of the training. Economic Impact also stated that it was not aware of any contractors, subcontractors, or vendors that had been approved to provide such training since issuance of the Executive Order.

¹ Data must be submitted manually into MAX.gov, a government-wide information sharing and data collection tool.

Even though the Department was not aware of any training subject to the above, the Deputy Secretary issued a memorandum on November 24, 2020, to all Heads of Department elements directing them to temporarily suspend all diversity and inclusion-related trainings, and any other training that might contain material covered by the Executive Order pending further guidance. The memorandum also required Heads of Department elements to identify all training programs related to diversity and inclusion conducted during fiscal year 2020 for Federal employees and the amount of funds expended on the training. Further, the memorandum required Heads of Department elements review all diversity and inclusion-related training conducted during fiscal year 2020 to determine whether the trainings teach, advocate, or promote the divisive concepts specified in the Executive Order. The memorandum noted that such diversity and inclusion-related training will not be eliminated but that OPM must review and approve all diversity and inclusion-related training materials before the training can be used, even if the materials have been utilized in the past. Additionally, Economic Impact indicated that its office informed the Directives Review Board of the need to update Department Order 311.1B, *Equal Employment Opportunity and Diversity Program*, to include language that requires compliance with executive orders on training.

Finally, Executive Order, Section 7, states that if a contractor provides a training for agency employees relating to diversity or inclusion that teaches, advocates, or promotes the divisive concepts described in the Executive Order, and such action is in violation of the applicable contract, the agency that contracted for such training shall evaluate whether to pursue debarment of that contractor. The Office of Management and the National Nuclear Security Administration stated that the Department had not pursued or received any referrals regarding debarments of any contractors that provided training for employees that would teach, advocate, or promote divisive concepts in violation of contract provisions incorporated as a result of the Executive Order. Because our review was limited to compliance with the Executive Order, we did not review existing contracts or past training programs.

PATH FORWARD

Because Executive Order 13950, *Combating Race and Sex Stereotyping*, was issued September 22, 2020, with effective dates of up to 90 days after the date of issuance, and the fact that the Department has complied or plans to comply with all areas of the Executive Order, we are not making any recommendations or suggestions at this time. In accordance with the Executive Order, we will review the Department's compliance annually and make any necessary recommendations or suggestions in future reviews.

Attachment

cc: Deputy Secretary
Chief of Staff

OBJECTIVE, SCOPE, AND METHODOLOGY

OBJECTIVE

We initiated this inspection to review and assess the Department of Energy's compliance with the requirements of Executive Order 13950, *Combating Race and Sex Stereotyping*.

SCOPE

This inspection was performed from October 2020 through December 2020. We conducted the inspection at the Department's Headquarters in Washington, DC and Germantown, MD. The inspection was conducted under Office of Inspector General project number S21OR005.

METHODOLOGY

To accomplish our objective, we:

- Reviewed Executive Order 13950, applicable external guidance, and relevant Department policies and procedures;
- Held discussions with senior Department officials from the Office of Economic Impact and Diversity, the Office of Management, and the National Nuclear Security Administration;
- Reviewed documentation relevant to the Department's compliance with the Executive Order; and
- Tested a judgmental sample of contracts entered into on or after November 21, 2020, for a clause requiring compliance with Executive Order 13950. Because sample selection was not statistical, the results and overall conclusions are limited to the contracts tested and cannot be projected to the entire population of contracts.

We conducted this inspection in accordance with the Council of the Inspectors General on Integrity and Efficiency, Quality Standards for Inspection and Evaluation. Those standards require that we plan and perform the inspection to obtain sufficient, appropriate evidence to provide a reasonable basis for our conclusions and observations based on our inspection objective. We believe that the evidence obtained provided a reasonable basis for our conclusions and observations based on our inspection objective. Accordingly, the inspection included tests of compliance with laws and regulations to the extent necessary to satisfy the inspection objective. Because our review was limited, it would not necessarily have disclosed all internal control deficiencies that may have existed at the time of our inspection. Our inspection did not identify any findings, and in our judgment the information gathered was sufficiently reliable for our purposes.

Management waived an exit conference on December 23, 2020.

FEEDBACK

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Office of Inspector General (IG-12)
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Washington, DC 20585

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