

Combating Race and Sex Stereotyping: How Does Executive Order 13950 Affect You?

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Agenda

- Overview of Executive Order 13950, Combating Race and Sex Stereotyping
- Effect on Grants
- Broad Definitions
- Possible Exemptions
- Hotline Is Open
- Potential Compliance Issues
- Consequences for Non-Compliance
- What Now?
- What Next?
- Questions

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Executive Order 13950, Combating Race and Sex Stereotyping

- Key Dates
- Definitions
- Mandatory Contract Provision + Flowdown Requirement
- Effect on Prime-Sub Relationship
- “Savings Clause”
- Notice Requirements

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Key Dates: 2020

Issuance Date:
September 22

Hotline Opened
September 28
(already open!)

Request for Information
October 22
(today)

Agency Head Reports Due (Grants Only)
November 21
(after the election)

Effective Date:
November 21
(after the election)

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Definitions

Divisive Concepts

Includes the following concepts:

- (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.

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Definitions

Race or Sex Stereotyping

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.

Race or Sex Scapegoating

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.

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Mandatory Contract Provision + Flowdown Requirement

“The contractor shall not use any workplace training that inculcates in its employees any form of race or sex stereotyping or any form of race or sex scapegoating . . . ”

“The contractor will include the provisions of paragraphs (1) through (4) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor, so that such provisions will be binding upon each subcontractor or vendor. . . . ”

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Effect on Prime-Sub Relationship

Enforcement

Sanctions

Litigation

Section 4, paragraph 4:

“The **contractor will take such action** with respect to any subcontract or purchase order **as may be directed by the Secretary of Labor** as a means of **enforcing such provisions** including **sanctions** for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, **the contractor may request the United States to enter into such litigation** to protect the interests of the United States.”

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“Savings Clause”

On **October 7, 2020**, the Department of Labor, through the Office of Federal Contract Compliance Programs (OFCCP), issued a new FAQ page, consistent with recent statements made by the Secretary of Labor, who coined the below paragraphs as a “Savings Clause.”

Section 10, paragraph (a)

This order does not prevent agencies, the United States Uniformed Services, or contractors from promoting racial, cultural, or ethnic diversity or inclusiveness, provided such efforts are consistent with the requirements of this order.

Section 10, paragraph (b)

Nothing in this order shall be construed to prohibit discussing, as part of a larger course of academic instruction, the divisive concepts listed in section 2(a) of this order in an objective manner and without endorsement.

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Notice Requirements

Sent to Whom?

Notice to labor unions or representative of workers with which the contractor has a collective bargaining agreement or other contract or understanding.

Posting of Notice

- Contractors must post copies of the notice in conspicuous places available to employees and applicants for employment.
- Job posting or website requirement?

Content of Notice

- Provided by the agency contracting officer.
- Advises the labor union or workers' representative of the contractor's commitments under the Executive Order.

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Effect on Grants



Heads of Agency Reports due **November 21, 2020**



No clear requirements or grant provision



What might happen?

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Broad Definitions

- How do we interpret these definitions?
- What types of training do these definitions include?
- How do the promotion and discussion provisions play into these definitions?

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Possible Exemptions



- The Secretary of Labor has the discretion to issue rules, regulations, or orders that exempt certain entities.
- Possible exemptions include:
 - Contracts, subcontracts, and purchase orders for work performed outside the United States that do not involve the recruitment of employees in the United States;
 - Work valued at an amount that is less than a to-be-determined threshold;
 - Subcontractors that fall below a specified tier;
 - Standard commercial supplies or raw materials; and
 - Certain contractor facilities that are entirely separate and distinct from those used in the performance of a Federal contract.

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Hotline Is Open

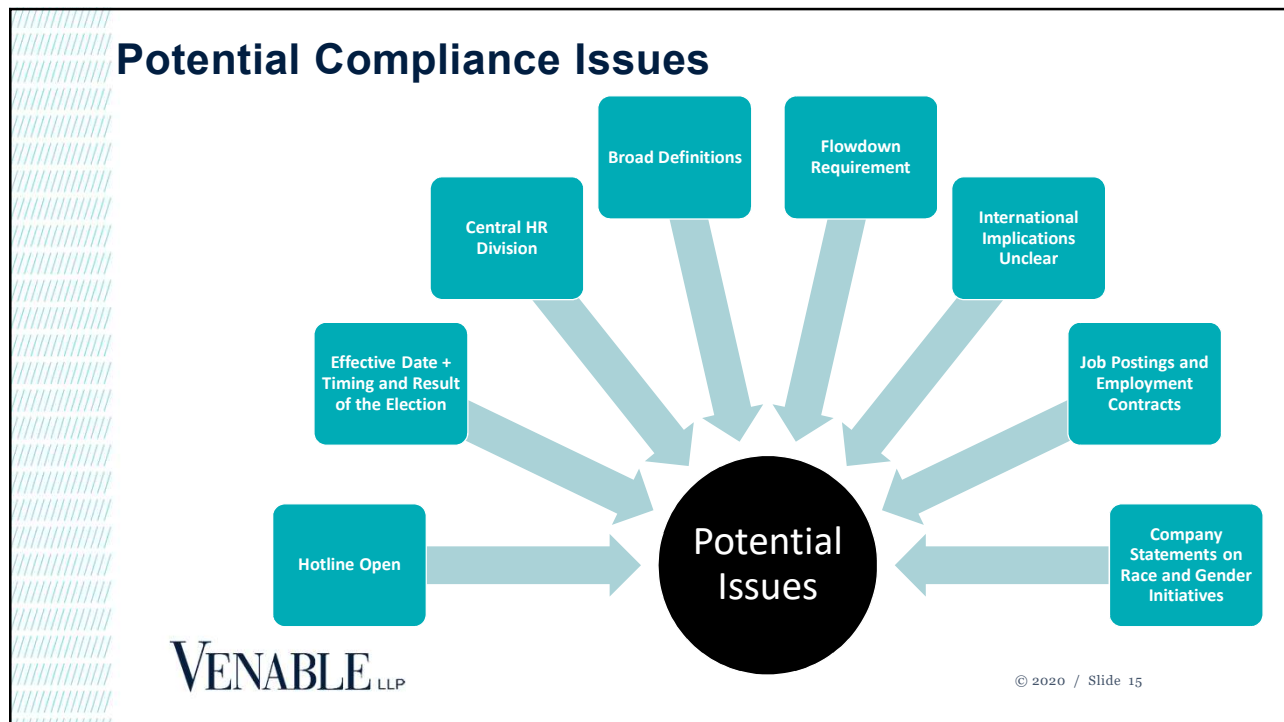


- On September 28 2020, both a hotline and an email address were opened to “combat race and sex stereotyping by federal contractors.”
- Overseen by the Department of Labor, through the OFCCP.
- Complaints received can result in investigations of federal contractors and subcontractors.
- Employees can submit training, workshop, and programming materials.
- References and welcomes reporting of violations of Executive Order 11246 (Equal Employment Opportunity) before November 21, 2020.

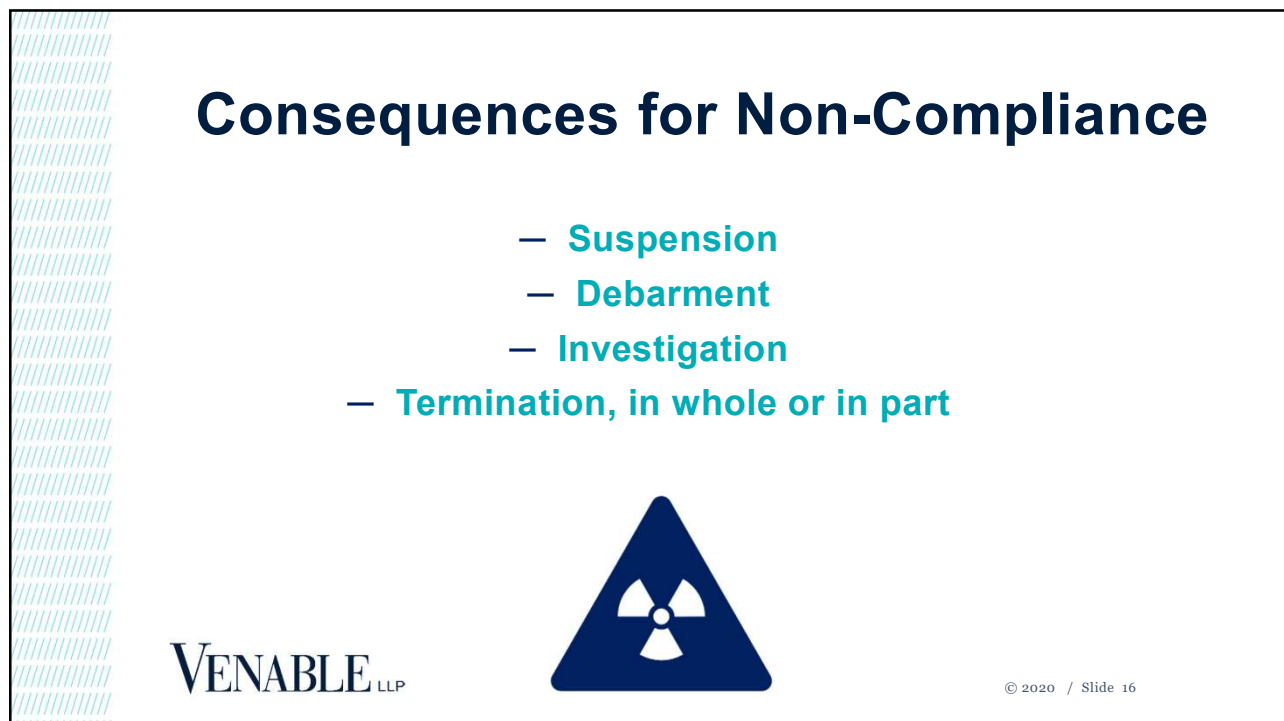
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What Now?

- **Significance of the Request for Information?**
- **Consistent with the OFCCP's new [FAQ page](#), stop all unconscious and implicit bias training.**
- **Review public statements.**
- **Review compliance with [Executive Order 11246](#), [Equal Employment Opportunity](#).**

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What Now?

- **Review company training programs, manuals, and training materials.**
- **Review terms of existing contracts, subcontracts, and grants, including potential for follow-on work.**
- **Have a diverse array of people available to answer employee questions and concerns.**

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What Next?

- **What will likely happen under a Trump Administration?**
- **What will likely occur under a Biden Administration?**
- **What happens if (when) we do not have the final election results in the immediate days or weeks following November 3?**

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Questions?

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