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Position Paper

Organization: National Blacks In Government, Inc.

Committee: National AE/EEO Committee

Topic: Training in the Federal Government

On September 4, 2020, the Office of Management and Budget's (OMB) Director, Russell Vought, at the direction of President Donald Trump, issued Memorandum M-20-34 (the memo, OMB memo) to the attention of Executive Branch agencies. The OMB memo directed agencies to immediately cease training that includes certain race-related topics, and to explore legal options for canceling contracts or other agency spending related to such training.

Force and Effect of the Memorandum

Generally, federal agencies act in accordance with three levels of guidance: 1) law, 2) regulations, and 3) guidance documents. Only law and regulations are legally binding. However, the effect of this memorandum, assuming, arguendo, it does not contradict a law or regulation, is that executive department agencies are required to act in compliance with its guidance. The Office of Management and Budget serves the President of the United States in overseeing the implementation of his vision across the Executive Branch. Specifically, OMB's mission is to assist the President in meeting his policy, budget, management, and regulatory objectives and to fulfill the agency's statutory responsibilities. OMB carries out this mission through issuance of guidance in the form of Presidential Executive Orders and Memoranda. As such, although federal agency guidance does not carry the force and weight of law, agencies are required to comply with OMB guidance that explains new regulations, responds to stakeholder questions, clarifies existing policies, and shares leadership priorities and initiatives.

Requirements Under the Memo

First, I note that the requirements under this memo are entirely unclear. Then, the memo advises that the Office of Management and Budget will shortly issue more detailed guidance on implementing the President's directive; however, as it stands, the memo makes the following unsupported assertions and mandates:

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- “It has come to the President's attention that Executive Branch agencies have spent millions of taxpayer dollars to date "training" government workers to believe divisive, anti-American propaganda.”
- “...For example, according to press reports, employees across the Executive Branch have been required to attend trainings where they are told that "virtually all White people contribute to racism" or where they are required to say that they "benefit from racism." According to press reports, in some cases these training have further claimed that there is racism embedded in the belief that America is the land of opportunity or the belief that the most qualified person should receive a job.”
- ... all agencies are directed to begin to identify all contracts or other agency spending related to any training on:
 - o "critical race theory”
 - o "white privilege"
 - o any other training or propaganda effort that teaches or suggests “...(1) that the United States is an inherently racist or evil country...”
 - o any other training or propaganda effort that teaches or suggests “...(2) that any race or ethnicity is inherently racist or evil.”
 - o All agencies should begin to “identify all available avenues within the law to cancel any such contracts and/or to divert Federal dollars away from these un-American propaganda training sessions.

AE/EEO Concerns

As noted, OMB guidance is subordinate to federal law and regulation, and because of that, it is important that we distinguish the training addressed in this memo from training on equal employment opportunity (EEO) laws. EEO training, including race discrimination training, is a requirement of federal law, and thus not subject to this memo. The OMB memo cannot release agencies from the requirement to train its employees on EEO laws. Under the Notification and Federal Employee Anti-Discrimination and Retaliation Act (No FEAR Act), Federal agencies are required to “...be accountable for violations of anti-discrimination and whistleblower protection laws” by, among other things, “providing training and notice of employee rights.” Federal laws that protect against discrimination in employment are enforced by the Equal Employment Opportunity Commission (EEOC). The EEOC is responsible for enforcing Title VII of the Civil Rights Act of 1964 (Title VII), [The Equal Pay Act of 1963 \(EPA\)](#), The Age Discrimination in Employment Act of 1967 (ADEA), Title I of the Americans with Disabilities Act of 1990 (ADA), Sections 102 and 103 of the Civil Rights Act of 1991, Sections 501 and 505 of the Rehabilitation Act of 1973, and The Genetic Information Nondiscrimination Act of 2008 (GINA). Title VII protects Federal employees, applicants for employment and former employees against race-based discrimination. No Fear requires that, at least every two years, an agency must provide training to its employees, including managers, regarding the rights and remedies available under the employment discrimination and retaliation laws, including Title VII. Additionally, under Title VII, the EEOC is empowered and responsible to review equal employment opportunity plans submitted by federal agencies :

“...The plan submitted by each department, agency, and unit shall include, but not be limited to-

(1) provision for the establishment of training and education programs designed to provide a maximum opportunity for employees to advance so as to perform at their highest potential;...”

As noted above, the memo has no impact on EEO laws training; rather it is geared at what might be called “cultural sensitivity training” or “unconscious bias training.” This type of training is intended to sensitize people to certain attitudes, stereotypes, or behaviors that may unintentionally offend others, especially, but not exclusively, members of minority groups. While the OMB cites unidentified “press reports” as evidence of such practices, it is certain that the vast majority of sensitivity training offered in the federal government does not promote such “divisive...propaganda.” Rather, sensitivity training, as it exists in the vast majority of agencies, is exactly the opposite, it is geared at understanding perspectives (all perspectives), biases, and stereotypes with the goal of increasing unity, not in dividing.

Blacks In Government will seek clarity on the issues related to training addressed in this memo. BIG will closely monitor this training directive and continue to work with our partners to promote diversity and inclusion in the federal workforce.

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