



AMERICAN ASSOCIATION FOR ACCESS, EQUITY AND DIVERSITY

**AMERICAN ASSOCIATION FOR ACCESS, EQUITY AND DIVERSITY
STATEMENT REGARDING PRESIDENT DONALD TRUMP'S EXECUTIVE ORDER ON COMBATING RACE
AND SEX STEREOTYPING**

Organization of equal opportunity and diversity professionals conveys its strong objections about the implications of this Order for Diversity and Inclusion programs

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Washington, DC, September 29, 2020 - *The American Association for Access, Equity and Diversity (AAAED), an organization of equal opportunity, diversity and affirmative action professionals, issued the following statement on the Executive Order on Combating Race and Sex Stereotyping handed down by the President of the United States on September 22, 2020. The Order purports 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."*¹

Instead of efficiency, this Order flies in the face of the First Amendment and burdens Federal agencies with the role of a content review board. This Order promulgates a particular world view about American history and seeks to enforce such a view in the education and training programs of government agencies, federal contractors and recipients of federal grants.

Moreover, this Order's timeline runs the risk of violating the requirements of the Administrative Procedure Act and the Paperwork Reduction Act, which require notice and comment before applicable rules are implemented. This Order also overburdens the federal agencies, including the Office of Federal Contract Compliance Programs (OFCCP) at the Department of Labor, which is understaffed and overburdened with the civil rights responsibilities it currently has. Under this Order, if someone complains about the content of a diversity training program with which they disagree, OFCCP will have to force the contractor to submit its curriculum and related materials for approval by the agency.

Lastly, the Order attempts to stall the nation's movement towards diversity and inclusion and will have a chilling effect on such efforts. Since the death of George Floyd and the ensuing community responses, corporations, institutions of higher education and nonprofit organizations have taken action to advance their commitment to diversity and inclusion programs. This Order contravenes the commendable actions towards progress and racial reconciliation.

The Order. In Section 1, the Order attempts to recount America's civil rights history: "from the bus boycott in Montgomery and the Selma-to-Montgomery marches," and quotes the Declaration of

¹ <https://www.whitehouse.gov/presidential-actions/executive-order-combating-race-sex-stereotyping/>

Independence: “We hold these truths to be self-evident, that all men are created equal.” It goes on to quote President Abraham Lincoln that “this belief is ‘the electric cord’ that ‘links the hearts of patriotic and liberty-loving’ people, no matter their race or country of origin”² Juxtaposed against this history lesson, the Order goes on to argue that a new ideology has emerged, “rooted in the pernicious and false belief that America is an irredeemably racist and sexist country; that some people, simply on account of their race or sex, are oppressors; and that racial and sexual identities are more important than our common status as human beings and Americans.” The Order sees recent analyses of history as attacks on white men and asserts that views acknowledging the pervasiveness of racism are “divisive.”

In order to “fix” this problem, reportedly emerging from the “1619 Project” and presumed trainers of “critical race theory,” this Order, in one broad stroke, strikes at the heart of the movement towards diversity and inclusion in the American workplace. Notwithstanding such exhortations of American liberty, the Order is the antithesis of liberty; it is a paean to authoritarianism clothed in the most aggressive assault on civil rights and free speech in recent history.

The Trump Order urges “executive departments and agencies (agencies), our Uniformed Services, Federal contractors, and Federal grant recipients” to continue to “foster environments devoid of hostility grounded in race, sex, and other federally protected characteristics” and purports to support efforts to train employees and create inclusive workplaces.

“Training employees to create an inclusive workplace is appropriate and beneficial. The Federal Government is, and must always be, committed to the fair and equal treatment of all individuals before the law.”

AAAED certainly supports this statement. However, the Order goes on to attack what it calls “blame-focused diversity training” or stereotyping as reinforcing bias and decreasing opportunities for minorities.³ It posits that because the federal government, including the armed services, is based on merit principles, teaching “the lie that the country for which they are willing to die is fundamentally racist” threatens the cohesion and effectiveness of our federal services. It makes the same assertion regarding federal contractors who are required to ensure nondiscrimination through affirmative action. “The participation of contractors’ employees in training that promotes race or sex stereotyping or scapegoating similarly undermines efficiency in Federal contracting.”

It therefore mandates: “it shall be the policy of the United States not to promote race or sex stereotyping or scapegoating in the Federal workforce or in the Uniformed Services, and not to allow grant funds to be used for these purposes. In addition, Federal contractors *will not be permitted to inculcate such views in their employees.*” (Emphasis added.) **It is the regulation of the content of diversity and inclusion training programs by the federal government that AAAED finds greatly concerning.**

Among other definitions, the Order defines “divisive concepts” as: “the 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.” Thus, calling attention to the nation’s history of slavery and its vestiges apparently would be a violation of this Order. To frontally attack the debate around reparations, the

² Ibid.

³ Ibid.

definition of “divisive concepts” also includes: “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.” Lastly the definition rejects the argument that imbedded in concepts of meritocracy in, for example, employment or admissions, are privileges based on race or class. It goes on to bar teaching based on the argument that “meritocracy or traits such as a hard work ethic are racist or sexist, or were created by a particular race to oppress another race.” To jettison the theory of privilege by race, class or caste, the Order also proscribes “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.”

Federal Contracts. The Trump Order refers to Executive Order 11246, signed by President Lyndon Baines Johnson in 1965. This order requires equal employment opportunity and nondiscrimination by entities receiving federal contracts. The Order is enforced by the Department of Labor’s Office of Federal Contract Compliance Programs (OFCCP). Section 4 of the Trump Executive Order specifically **bars contractors from including the aforementioned objectionable content in their training programs.** Thus, consistent with the definitions included in the Trump Order, federal contractors cannot use any training that inculcates race or sex stereotyping, scapegoating, adverse treatment, moral character based on race or sex, responsibility for past actions, guilt, meritocracy as racist or any form of fault-finding or blaming based on race or sex. Contractors must also notify unions of the requirements to combat “race and sex stereotyping.” These prohibitions must be included in every federal contract or subcontract unless exempted by rules, regulations or orders of the Secretary of Labor.

Contractors who violate the Trump Order risk losing their federal contracts through procedures enforced by the OFCCP. The agency is also required to establish a **hotline** to investigate complaints and within thirty days, the Director must

publish in the Federal Register a request for information seeking information from Federal contractors, Federal subcontractors, and employees of Federal contractors and subcontractors regarding the training, workshops, or similar programming provided to employees. The request for information should request copies of any training, workshop, or similar programming having to do with diversity and inclusion as well as information about the duration, frequency, and expense of such activities.

Thus, an agency whose mission is equal employment opportunity and whose employees are unskilled in Diversity and Inclusion Management curricula must become the content police.

Federal Grants. Federal contractors are not the only ones who are covered by the Trump Executive Order. Those receiving federal grants may also be required to examine their training programs for the prohibited content. In Section 5. of the Order, the heads of Federal 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 recipient to certify that it will not use Federal funds to promote the concepts” outlined in the Order. **The agency heads must submit a list of all covered grants to the Office of Management and Budget within 60 days of the Trump Order.**

Federal Agencies. Under Section 6. of the Order, federal agency officials must also exorcize the offensive language from their training programs and the requirements of the Order must be included in training contracts for diversity training. Adverse actions will be taken against the offending federal employee. Under Section 7. of the Trump Order, the Office of Management and Budget and Office of Personnel Administration **must review “all training programs for agency employees relating to**

diversity or inclusion before being used.” If a contractor providing diversity training includes the prohibited language, it risks being debarred from obtaining contracts with the Federal government.

The Attorney General and EEOC. It is not enough that the federal agencies, contractors and grant recipients are at risk of losing their grants, contracts or jobs if they deign to include the language deemed unacceptable, the Attorney General must work with the Equal Employment Opportunity Commission to:

continue to assess the extent to which workplace training that teaches the divisive concepts set forth in section 2(a) of this order may contribute to a hostile work environment and give rise to potential liability under Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e et seq. If appropriate, the Attorney General and the Equal Employment Opportunity Commission shall issue publicly available guidance to assist employers in better promoting diversity and inclusive workplaces consistent with Title VII.

The Trump Order appears to require a review of all diversity and inclusion training programs and specifically excludes the prohibition of such divisive language while “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.” It is unclear how the government will interpret the words “objective” and “without endorsement.”

We would never have believed that in 2020, the United States government would act with such disregard for the Freedom of Speech provided in the U.S. Constitution, the administrative processes established by law, and the burdens that federal agencies, contractors, and grant recipients currently undergo with regulations and rules enforced by the federal government and its oversight function. This Order may be a short-term political ploy, but it has long-term, deleterious effects, which the American Association for Access, Equity and Diversity must strenuously oppose.

Founded in 1974 as the American Association for Affirmative Action (AAAA), AAAED is a national not-for-profit association of professionals working in the areas of equal opportunity, compliance and diversity. The longest-serving representative of individuals in the equal opportunity and diversity professions, AAAED has 46 years of leadership providing quality professional training to practitioners and promoting understanding and advocacy of affirmative action and other equal opportunity laws. Nearly one-half of its membership is composed of EEO professionals working for academic institutions.

For more information about AAAED, go to: www.aaaed.org.

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