



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

March 2, 2021

M-21-17

MEMORANDUM TO THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: Robert Fairweather
Acting Director

A handwritten signature in black ink that reads "Robert Fairweather".

SUBJECT: Revocation of Executive Order 13950, M-20-37, and M-20-34

On January 20, 2021, President Biden issued Executive Order (E.O.) 13985, *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government*, to affirm equal opportunity as the bedrock of American democracy and lay the foundation for a whole-of-government approach to advancing equity for all. As an immediate first step, E.O. 13985 revoked E.O. 13950, *Combating Race and Sex Stereotyping*, which restricted the availability of workplace diversity training and programs for federal employees and government contractors, or use of federal grants for these purposes.

This Memorandum provides detailed instructions for agencies to ensure the complete rollback of agency actions that were taken pursuant to E.O. 13950. Effective immediately, this Memorandum rescinds OMB Memorandum M-20-37, *Ending Employee Trainings that Use Divisive Propaganda to Undermine the Principle of Fair and Equal Treatment for All* (Sept. 28, 2020) and Memorandum M-20-34, *Training in the Federal Government* (Sept. 4, 2020), which provided implementation guidance of E.O. 13950. Agencies must take appropriate actions to ensure the complete reversal of agency action implementing the now-rescinded OMB policy memoranda.

E.O. 13950 prohibited certain content in diversity and inclusion training and established sanctions for noncompliance. In particular, E.O. 13950: (1) prohibited federal contractors from engaging in specified diversity and inclusion training and directed the Office of Federal Contract Compliance Programs (OFCCP) in the Department of Labor to take actions to enforce the prohibition, (2) required federal agencies to 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 they will not use federal funds to promote these activities, and (3) instructed agencies to identify and prevent prohibited trainings for federal employees.

Section 10(b) of E.O. 13985 requires agencies to review and identify proposed and existing agency actions related to or arising from E.O. 13950 and further requires the

head of each agency, by March 22, 2021, to “consider suspending, revising, or rescinding any such actions, including all agency actions to terminate or restrict contracts or grants pursuant to Executive Order 13950, as appropriate and consistent with applicable law.”¹

As stated above, this Memorandum rescinds Memoranda M-20-37 and M-20-34. Therefore, agencies must cease performing the directives in these rescinded memoranda and return to the pre-E.O. 13950 *status quo*, including by ensuring the following additional steps have been, or are being, taken.

a. Federal Contracts. Agencies are not authorized to include the contractual language from E.O. 13950 in their solicitations or resulting contracts. Agency heads must take appropriate action, consistent with applicable law, to rescind, any FAR class deviations or similar directives agencies issued in order to implement E.O. 13950’s federal contracting requirements. To the extent that the contractual language from E.O. 13950 has already been inserted into contracts, agencies must take appropriate actions to ensure such provisions are not enforced, such as by continuing and making permanent the suspension put in place when the preliminary injunction was issued or modifying contracts to remove the clause. If the clause is not expressly removed from the contract, agencies shall, consistent with applicable law:

- (i) waive enforcement of clauses added pursuant to section 4(a) of E.O. 13950;
- (ii) refrain from cancellation, termination, or suspension, in whole or in part, any contractor or subcontractors’ government contracts for purported noncompliance with E.O. 13950 or related agency action implementing sections 4 or 5 of that E.O.;
- (iii) refrain from declaring any contractor or subcontractor ineligible for further government contracts, nor impose any other sanctions, on the basis of purported noncompliance with E.O. 13950 or any agency action implementing sections 4 or 5 of that E.O.; and
- (iv) stop requiring contractors or subcontractors to provide notice of any commitments under E.O. 13950 or any contract term inserted pursuant to the E.O. to their respective labor unions or employee representatives.

Additionally, federal contractors, including subcontractors and vendors performing under government contracts, shall not be investigated, debarred, or otherwise penalized for purported violations of E.O. 13950.

Agencies shall take all reasonable steps to notify any contractors who already have entered into contracts including the provisions described in section 4(a) of E.O. 13950, that those provisions are not operational, that the United States will not enforce those provisions, and that contractors should not enforce such provisions to the extent the

¹ On December 22, 2020, prior to the issuance of E.O. 13985, the United States District Court for the Northern District of California issued a preliminary injunction enjoining sections 4 and 5 of E.O. 13950, including OMB Memorandum M-20-34, OMB Memorandum M-20-37, Department of Labor FAQs dated October 7, 2020, and Department of Labor Request for Information dated October 22, 2020, as they pertain to such sections of the E.O. In response, OMB provided notice to agencies, in consultation with the Department of Justice, of actions required to be taken to ensure compliance with the preliminary injunction. The preliminary injunction prohibits enforcing the contractual language in sections 4 and 5 of E.O. 13950.

language was included in their subcontracts (in addition to the notice that was required after the preliminary injunction was issued). Agencies should also, as practicable, promote awareness of the rescission of E.O. 13950 to their contracting communities at large.

Furthermore, the Department of Labor's OFCCP will not enforce such contractual language and will immediately discontinue any other implementation actions (e.g., cease operating its phone hotline and administratively close any complaints regarding noncompliance).²

b. *Federal Grants*: The Office of Federal Financial Management has rescinded a Controller Alert, issued on December 15, 2020, that required agencies to consider boilerplate language to include in future notice of funding opportunities and federal awards, including reference to E.O. 13950. As described in the rescission, the December 15, 2020 Controller Alert does not align with this Administration's policies and priorities. As a result, agencies are not authorized to require grant recipients to certify compliance with section 5 of E.O. 13950 or include such a requirement in grant notices of funding opportunities. For existing grants that require such a certification as a condition of funding, agencies shall, consistent with applicable law:

- (i) waive enforcement of any terms or conditions added pursuant to section 5 of E.O. 13950;
- (ii) provide notice to recipients that the United States will not enforce relevant terms or conditions (in addition to the notice that was required after the preliminary injunction was issued); and
- (iii) inform recipients that they should not enforce such language to the extent recipients have included it in subawards.

Additionally, Federal award recipients, including subrecipients performing under grants, shall not be investigated, debarred, or otherwise penalized for purported violations of E.O. 13950.

c. *Federal Employee Training*: The Office of Personnel Management will rescind its guidance to Chief Human Capital Officers and Human Resources Directors issued on October 2, 2020, and cease reviewing diversity and inclusion training for compliance with E.O. 13950.

d. *Information provided to OMB*: To the extent that agencies provided OMB with information requested by E.O. 13950, OMB will not act on that information.

Agencies are instructed to promptly take the actions identified above, but no later than March 22, 2021, consistent with the deadline specified in section 10(b) of E.O.

² OFCCP advises that it has ceased operating its hotline (as of January 29, 2021), administratively closed all complaints in response to EO 13950 (as of February 15, 2021), and stopped reviewing submissions received in response to the Request for Information on December 22, 2020. Information on its actions is provided on the OFCCP homepage. https://www.dol.gov/agencies/ofccp/executive-order-13950?utm_campaign=&utm_medium=email&utm_source=govdelivery.

13985. OMB and the Domestic Policy Council will provide additional instructions to agencies on reporting to OMB steps taken in response to section 10(b) of E.O. 13985, as part of overall progress reports related to agency actions pursuant to E.O. 13985. Questions regarding this Memorandum may be directed to equity@omb.eop.gov.