

NATIONAL SECURITY AGENCY/CENTRAL SECURITY SERVICE



INSPECTOR GENERAL REPORT

**Review of the Agency's Implementation of
Executive Order 13950 on Combating Race
and Sex Stereotyping**

AD-21-0002

30 December 2020

OFFICE OF THE INSPECTOR GENERAL

Pursuant to the Inspector General Act of 1978, as amended, and in accordance with NSA/CSS Policy 1-60, the NSA/CSS Office of the Inspector General (OIG) conducts independent oversight that promotes Agency respect for Constitutional rights, adherence to laws, rules, and regulations, and the wise use of public resources. Through investigations and reviews, we detect and deter waste, fraud, abuse, and misconduct and promote the economy, the efficiency, and the effectiveness of Agency operations.

AUDIT

The Audit Division comprises three sections: Cybersecurity and Technology, Financial Audits, and Mission and Mission Support. The Division's audits and evaluations examine the economy, efficiency, and effectiveness of NSA programs and operations; assess Agency compliance with laws, policies, and regulations; review the operation of internal information technology and controls; and determine whether the Agency's financial statements and other fiscal reporting are fairly and accurately presented. Audits are conducted in accordance with auditing standards established by the Comptroller General of the United States.

INSPECTIONS

The Inspections Division performs organizational inspections and functional evaluations to assess adherence to regulations and policies and to promote the effective, efficient, and economical management of an organization, site, or function. OIG inspection reports recommend improvements and identify best practices across a broad range of topics, to include mission operations, security, facilities, and information technology systems. The Inspections Division also partners with Inspectors General of the Service Cryptologic Elements and other IC entities to jointly inspect consolidated cryptologic facilities. Inspections and evaluations are conducted in accordance with the Council of the Inspectors General on Integrity and Efficiency (CIGIE) "Quality Standards for Inspection and Evaluation."

INTELLIGENCE OVERSIGHT

The Intelligence Oversight Division (IO) conducts evaluations that examine a wide range of NSA intelligence and intelligence-related programs and activities to assess if they are conducted efficiently and effectively, and are in compliance with federal law, executive orders and directives, IC, DoD, and NSA policies, and appropriately protect civil liberties and individual privacy. The IO function is grounded in Executive Order 12333, which establishes broad principles for IC activities. IO evaluations are conducted in accordance with the CIGIE "Quality Standards for Inspection and Evaluation."

INVESTIGATIONS

The Investigations Division examines allegations of waste, fraud, abuse, and misconduct by NSA affiliates or involving NSA programs or operations. The investigations are based on submissions made through the classified or unclassified OIG Hotline, as well as information uncovered during OIG audits, inspections, and evaluations, and referrals from other internal and external entities. Investigations are conducted in accordance with the CIGIE "Quality Standards for Investigations."

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NOTE: A classified version of the Review of the Agency's Implementation of Executive Order 13950 on Combating Race and Sex Stereotyping formed the basis of this unclassified version.



**NATIONAL SECURITY AGENCY
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30 December 2020
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SUBJECT: Final Report on the Select Review of the Agency’s Implementation of Executive Order 13950 on Combating Race and Sex Stereotyping (AD-21-0002)—ADVISORY MEMORANDUM

Objective

The overall objective of the review is to assess the Agency’s progress implementing the requirements of Executive Order (E.O.) 13950 on Combating Race and Sex Stereotyping.

Background

On 22 September 2020, the President of the United States established E.O. 13950 on Combating Race and Sex Stereotyping, which requires federal agencies, federal grantees, federal contractors, and the Uniformed Services to address trainings that include divisive concepts, race or sex stereotyping, and race or sex scapegoating, as defined in the E.O.

E.O. 13950, Section 6(c)(ii) states that each agency head shall request the agency Inspector General (IG) to thoroughly review and assess by the end of the calendar year, and not less than annually thereafter, agency compliance with the requirements of this order in the form of a report to be submitted to the Office of Management and Budget (OMB).

According to the Secretary of Defense Memorandum “Implementation of Executive Order on Combating Race and Sex Stereotyping,” 16 October 2020, the Department of Defense Office of the Inspector General (DoD OIG) was requested to thoroughly review and assess compliance with the requirements of the E.O. Based on discussions with the DoD OIG, the NSA Office of the Inspector General (NSA OIG) agreed to coordinate our review with the DoD OIG and provide our draft report to them by 15 December 2020, and we will also provide our final report to OMB by the end of December 2020.

Scope and Methodology

In accordance with E.O. 13950, the OIG assessed the Agency’s compliance and progress in implementing the requirements of the E.O. on Combating Race and Sex Stereotyping. We reviewed the E.O., applicable OMB guidance, and relevant Agency policies and procedures. In addition, we interviewed the Agency’s contracting office and Diversity, Equality and Inclusion

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(DEI), obtained a listing of all trainings that had been assessed for compliance as of 4 December 2020, reviewed recent contracts to ensure that the documentation required by the E.O. was included, and requested the Agency grant documentation to support compliance with the E.O. and OMB guidance. The OIG audit team used professional judgment to determine the extent of testing to meet the objective.

In addition, the OIG audit team requested and reviewed 11 OIG Hotline complaints received by the OIG for FY 2021 and FY 2020. Six complaints received were made by employees who believed that Agency directorates released potentially divisive documents and published potentially divisive text and videos via their internal website and email. One of the six complaints has been elevated to an inquiry, while the remaining were evaluated by the Investigations Division and referred to the Agency for management action as deemed appropriate or otherwise resolved and closed.

Federal Requirements

- E.O. 13950 on Combating Race and Sex Stereotyping, 22 September 2020.
- OMB M-20-34, “Training in Federal Government,” 4 September 2020.
- OMB M-20-37, “Ending Employee Trainings that use Divisive Propaganda to Undermine the Principle of Fair and Equal Treatment for All,” 28 September 2020.
- Office of Personnel Management (OPM) guidance, “Mandatory Review of Employee Training under E.O. 13950 September 22, 2020,” 2 October 2020.

Government Contractors

In response to OMB-M-20-37 and E.O. 13950, Defense Pricing and Contracting notified the Agency’s contracting office on 23 November 2020 that effective immediately a new Defense Federal Acquisition Regulation Supplement (DFARS) clause, 252.222-7999, Combating Race and Sex Stereotyping, was required for every contract issued over \$10,000. The alert below (Figure 1) was released to the contracting workforce via email on the same day, 23 November 2020, and notified them of the new update. According to the Agency’s contracting office, the next day, 24 November 2020, the new clause was added to the contract generation system, Business Acquisition Management (BAM), which will automatically include the clause in future awards.¹

¹The clause (Deviation 2021-O0001) states that federal contractors and subcontractors shall not provide any training to their employees that includes any form of race or sex stereotyping or any form of race or sex scapegoating, along with consequences associated with ignoring the requirements listed in the clause.

Figure 1: Screenshot of Alert to Agency's Contracting Workforce

FAR/DFARS Updates

New Clause Alert Class Deviation 2021-O0001, Combating Race and Sex Stereotyping
A [class deviation](#) was released to announce the use of a new DFARS clause: 252.222-7999, Combating Race and Sex Stereotyping. Effective immediately, include this clause in all solicitations and contracts issued **on or after 20 November 2020**, if the contract will also include clause 52.222-26, Equal Opportunity. For any open solicitations that include 52.222-26, amend the solicitation to include the new DFARS clause and include it in the subsequent award. If you awarded a contract on or after 20 November, and it included 52.222-26, please modify your contract to include the new clause.

The existing templates that include 52.222-26 were updated to also include 252.222-7999.

Although the OIG finds that the Agency's contracting office responded quickly to the update once they were notified, the implementation of the new DFARS clause on 23 November 2020 was three days after the required effective date of 20 November 2020, as established in OMB M-20-37. The OIG confirmed with the Agency's contracting office that between 21 November and 24 November, 14 contracts over \$10,000 had been awarded. However, due to the new mandatory clause not being included in the BAM system until 24 November 2020, the 14 contracts were awarded without the required clause. During the time of this review, the Agency's contracting office stated that they have contacted each cognizant Contracting Officer of the 14 contracts to modify their contracts and include the required clause. In addition, the Agency's contracting office has sent alerts via email to the workforce reminding them of the update.

Federal Grants

OMB M-20-37 states:

Federal awarding agencies must update their guidance, practices, and procedures to ensure that future notice of funding opportunities and the terms and conditions of Federal awards restrict the use of Federal Funds, including funds to meet cost share requirements, from being used to promote the divisive concepts set forth in the E.O., to the extent consistent with the statute(s) governing the grant program and all other applicable law.

Additionally, it states: "Federal awarding agencies are required to report to OMB, through their RMO [Records Management Officer], those programs for which the agency may impose the conditions identified in Section 5 of the E.O. by 20 November 2020."

As of 3 December 2020, the Agency's contracting office confirmed that the Agency had 435 active grants and that no changes with regard to the E.O. or OMB guidance had been made to the grant process at that time. The Agency's contracting office informed the OIG that it had requested guidance from the DoD Grants Policy Team to determine if updates will be made to the terms and conditions document used for grants to ensure a consistent process across the DoD. On 9 December 2020, the Agency's contracting office provided the OIG audit team an update stating

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that the Agency is currently coordinating this requirement with the DoD Grants Policy Team and is in the process of identifying reportable programs.

Agency Requirements and Actions Taken

The OIG audit team met with DEI to discuss the actions taken by the Agency to prevent training on, and promotion of, divisive concepts as required by E.O. 13950. According to DEI, based on OMB M-20-34, dated 4 September 2020, prior to the issuance of E.O. 13950, the Agency began to cease any training-type activities including facilitated discussions and video and book discussions that could be construed to be similar to the topics addressed in OMB M-20-24 memo, *e.g.*, on “critical race theory” or “white privilege.”

The OIG further determined that, after receiving notice of the Executive Branch guidance on the implementation of E.O. 13950, NSA suspended 41 Diversity & Inclusion (D&I) trainings until approved by OPM. NSA indicated that it was continuing to provide what is legally mandated and necessary to meet legal requirements, such as No Fear Act training, Harassment Prevention, and Disability Awareness.

Following the issuance of E.O. 13950, between 22 September and 28 September 2020, DEI took the following steps:

- Consulted with the Agency’s Office of General Counsel (OGC) to determine the E.O. 13950 requirements.
- Notified the Agency’s Senior Executive population that all D&I trainings should cease and would remain on hold until further notice, and provided them with information on E.O. 13950 as well as a copy of the implementing guidance from OPM and OMB.
- Ceased all D&I training through DEI staff and the National Cryptologic School (NCS). Such training consisted of formal classroom and web-based training, as well as informal training, such as DEI-facilitated D&I and book reviews/discussions.
- Implemented a Standard Operating Procedure used to review requests from Agency directorates that could be considered D&I training.
- Provided guidance, in consultation with the OGC or utilizing a rubric of OGC-provided criteria, to the workforce about whether proposed trainings or activities would be considered prohibited D&I training under the E.O.
- Issued numerous communications to the workforce from October to November 2020 about E.O. 13950 via the *Daily Enterprise*, Cryptologic Center, Leadership Blog, and DEI websites.

As of 4 December 2020, DEI identified a total of 16 training courses, which included NCS courses, briefings offered by Employee Resource Groups (ERGs), and DEI-facilitated discussions, for which they intend to provide DoD with training materials for submission to OPM for pre-

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clearance. The 16 courses are listed in Table 1 below; the Agency plans to submit the trainings to OPM for approval by the suspense date, 11 January 2021.²

Table 1: Ceased Trainings Awaiting Pre-Clearance as of 4 December 2020

National Cryptologic School Courses	Employee Resource Group Briefings	DEI Facilitated Discussions
EEOD 2200: Effective Board Service	NSA Texas: A Path Towards Networking, Inclusion, and Success (ERG Overview)	Confronting My Own Thoughts: How to Handle the Stereotypes in My Mind
EEOD 2300: Unconscious Bias: Recognize. Reflect. Respond	NSA Texas: D&I Briefing	Building Diverse Teams
EEOD 2350: Approaching Cultural Proficiency	NSA Texas: Site Review Brief on ERGs	
EEOD 2400: Fostering Inclusion	American Veterans ERG: ERG Overview Brief	
EEOD 2500: Becoming an Ally	Islamic Cultural ERG: Islam 101	
MGMT2602: Management Essentials Module on Diversity	PRIDE ERG: Ally Awareness	
New Employee Orientation: Unconscious Bias Module	PRIDE ERG: Transgender Awareness	

Additionally, NSA reported that, as of 9 December 2020, it was not aware of any violations by Agency contractors, and it has not initiated any debarment actions against Agency contractors for providing training in violation of the E.O.

DEI determined that in FY 2020, approximately \$1.6 million was spent on Agency D&I trainings and course materials. The Agency submitted its FY 2020 D&I training costs on 15 December 2020 to the USD as required. The cost was derived from NCS, Business Management & Acquisition (BM&A) contracting costs, an agency-wide directorate data call, the Conference Call office in the Agency, DEI records, and other sources.

² The USD issued a memo, *Review Procedures for Diversity and Inclusion Training Provided to Military and Civilian Personnel*, dated 11 December 2020, which provides that training materials must be submitted to the Office of the Under Secretary of Defense for Personnel and Readiness (OUSD[P&R]) by 11 January 2021.

Conclusion

The OIG assessed that the Agency has been proactive and has made significant efforts and substantial progress in implementing E.O. 13950 since its issuance on 22 September 2020. At the time of this report, the Agency was waiting for guidance from DoD on changes to the federal grants process and, according to DEI, the Agency is on pace to meet the 11 January 2021 date to have D&I trainings submitted to OPM for approval.



ROBERT P. STORCH
Inspector General

APPENDIX A: Suspended Course List

National Cryptologic School Courses	NCS Skillssoft Web-based training*	ERG Briefings	Diversity, Equality and Inclusion Facilitated Discussions	Other
EEOD 2200: Effective Board Service	Advanced HR Management: Workplace and HR Strategy	NSA Texas: A Path Towards Networking, Inclusion, and Success (ERG overview)	Confronting My Own Thoughts: How to Handle the Stereotypes in My Mind	Directorate-led discussions on diversity and inclusion
EEOD 2300: Unconscious Bias: Recognize. Reflect. Respond.	Emotional Intelligence: Being Aware of the Emotions of Others	NSA Texas: D&I Brief	Building Diverse Teams	Directorate-led book discussions on diversity and inclusion
EEOD 2350: Approaching Cultural Proficiency	HR Competencies: Global and Cultural Effectiveness and Communication	NSA Texas: Site Review Brief on ERGs	Togetherness & Transparency Amid Current Events	Directorate-led discussions on social justice
EEOD 2400: Fostering Inclusion	Managing Diversity	American Veterans ERG: ERG Overview Brief	Bizeer Gummies: Intentionally Investing More Time is Worth the Investment	All after-hours (University-led) training on diversity and inclusion
EEOD 2500: Becoming an Ally	Understanding Unconscious Bias	Islamic Culture ERG: Islam 101	Psychological Safety Workshop	All external vendor training on diversity and inclusion
MGMT 2602: Management Essentials Module on Diversity	Overcoming Your Own Unconscious Biases	PRIDE ERG: Ally Awareness	You're an Ally, I'm an Ally	All external conferences focused on diversity and inclusion
New Employee Orientation: Unconscious Bias Module	Workplace Management: Global HR, Diversity, and Inclusion	PRIDE ERG: Transgender Awareness	Intent v. Impact	
EEOD 5500: NSA Senior Leadership Diversity Seminar	Career and Family Challenges for Women Leaders	African-American ERG - Taboo Talk Tuesdays	Creating/Maintaining Inclusive Environments in the Workplace	
		African American ERG: Ground Game	Swimming's Great, Just Don't Get Me Wet	
		African American ERG: State of African Americans at NSA		

*Note: All SkillSoft training was stopped by NCS until diversity and inclusion courses could be identified.

ABBREVIATIONS AND ORGANIZATIONS

BAM	Business Acquisition Management
BM&A	Business Management & Acquisition
DEI	Diversity, Equality and Inclusion
DFARS	Defense Federal Acquisition Regulation Supplement
D&I	Diversity and Inclusion
DoD	Department of Defense
EEOD	Equal Employment Opportunity & Diversity
E.O.	Executive Order
ERG	Employee Resource Group
IG	Inspector General
NCS	National Cryptologic School
NSA	National Security Agency/Central Security Service
OGC	Office of General Counsel
OIG	Office of the Inspector General
OMB	Office of Management and Budget
OPM	Office of Personnel Management
OUUSD(P&R)	Office of the Under Secretary of Defense (Personnel and Readiness)

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