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**From:** University Counsel U CSL [U CSL] <univcounsel@iastate.edu>  
**Sent:** Tuesday, October 20, 2020 2:39 PM  
**Subject:** Executive Order on Combating Race and Sex Stereotyping - Impact on ISU Diversity and Inclusion Programs  
**Attachments:** 2020-10-20.FAQ\_Executive Order on Combating Race and Sex Stereotyping.pdf

Dear Iowa State faculty and staff,

On September 22, President Trump issued an Executive Order “to combat offensive and anti-American race and sex stereotyping.” You can read the order [here](#). The Order aims to shape the content of diversity trainings conducted by federal government entities as well as federal contractors and recipients of federal grants. As both a federal contractor and recipient of federal grants, Iowa State University’s diversity trainings may be impacted by the Order. Iowa State University will continue its commitment to diversity, equity, and inclusion and its effort to provide trainings that increase understanding of these critical concepts.

On October 9, administrators were provided with a [summary of the Order](#) and a review of how the order will impact the university and our compliance plan. **As we implement the compliance plan, scheduled diversity training should continue.** The compliance plan will allow the university to make any necessary adjustments to university training, while continuing our efforts to promote a diverse, inclusive, and welcoming campus climate. Shown below are frequently asked questions regarding the Executive Order and our responses. If you have any additional questions, please contact the Office of University Counsel at [UniversityCounsel@iastate.edu](mailto:UniversityCounsel@iastate.edu).

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## **EXECUTIVE ORDER ON COMBATING RACE AND SEX STEREOTYPING – IMPACT ON ISU DIVERSITY AND INCLUSION PROGRAMS**

### **FREQUENTLY ASKED QUESTIONS**

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#### **Q. What is the Executive Order?**

**A.** On September 22, President Trump issued an Executive Order “to combat offensive and anti-American race and sex stereotyping.” The Order aims to shape the content of diversity programming and trainings conducted by federal government entities as well as federal contractors and federal grant recipients. As both a federal contractor and recipient of federal grants, some of Iowa State University’s diversity trainings and related programming may be impacted by the Order.

#### **Q. Will the Order Require the University to Change its Commitment to Diversity, Equity and Inclusion?**

**A.** No. Iowa State University will continue its commitment to diversity, equity, and inclusion and its effort to provide trainings that increase understanding of these critical concepts. The Order will require the university to review its trainings on these topics and make any required adjustments to ensure compliance. The university can undertake a good faith effort to comply with the Order, without undermining the essential principles and values of its ongoing diversity, equity and inclusion work and without jeopardizing continued access to the approximately \$200 million in federal contracts and grants that are critical to support faculty, staff and students in accomplishing the university’s mission.

#### **Q. Does the Order Prohibit All Diversity and Inclusion Trainings and Programs?**

**A.** No. Based on the information currently available, many diversity and inclusion programs will be unaffected or minimally affected by the Order. The Order itself makes clear it 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.” The Order also makes clear that “[n]othing in this order shall be construed to prohibit discussing, as part of a larger course of academic instruction, the ‘divisive concepts’ [identified in the Order] in an objective manner and without endorsement.” In addition, as discussed above, the Order’s federal contractor prohibitions apply only to employee workplace trainings. The Order’s federal grantee prohibitions apply only to programs that are funded with the federal grant funds.

**Q. Is the University Asking All Scheduled Diversity, Equity and Inclusion Trainings to Stop.**

A. No. Scheduled diversity training programs should continue. The compliance plan being implemented by the university will allow necessary adjustments to workplace trainings, while continuing our efforts to promote a diverse, inclusive and welcoming campus climate.

**Q. What Types of Programs Would the Order Prohibit?**

A. With respect to the university, the Order impacts federal contractors and federal grant recipients. The Order prohibits federal contractors from providing “*workplace trainings*” that promote what the Order identifies as “divisive concepts.” The Order also prohibits the awarding of federal grants to programs that promote these “divisive concepts.” Based on the plain language of the Order, the Order’s restrictions on “workplace trainings” are likely to apply university-wide, that is, to all of the university’s workplace trainings. In contrast, the Order’s restrictions on other programming/events, beyond workplace trainings, likely only apply if the program/event is federally funded. The Order defines “divisive concepts” to include the following concepts quoted below:

- 1) “[O]ne 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.”

**Q. When Does the Order Go into Effect, and How Will I Know if it Impacts My Specific Training or Program?**

A. Some parts of the Order were effective immediately. For example, the Order compels federal agencies to immediately begin preparing for the Order by reviewing their contracts and grant programs, and a complaint hotline has already been established to receive complaints. However, as it pertains to federal contractors, the Order requires that

all new contracts as of November 21, must include provisions forbidding the contractor and any subcontractors from using any “workplace training” that promotes any of the “divisive concepts” identified above. As it pertains to federal grant programs, the Order requires that by November 21, federal agencies must produce a list of grant programs where the grantee must certify that they will not use federal funds to promote any of the “divisive concepts.”

Accordingly, if your department/unit is supported, in whole or in part, by a federal contract you and your unit leader should be on alert with respect to any new contract or renewal contract that your unit enters into with the federal government. This new contract provision (prohibiting promoting “divisive concepts” in workplace trainings) is likely to be included in any new/renewed contract. If your department/unit is supported, in whole or in part, by a federal grant, you and your unit leader should be on alert for any communication from the relevant federal agency. The federal agency may inform you of this new eligibility condition (prohibiting the use of federal grant money to promote “divisive concepts”) in the coming weeks.

**Q. I’m a Faculty Member who Teaches a Class that Examines and Discusses Some or Many of the “Divisive Concepts.” Should I Alter My Class?**

**A.** The primary and most immediate focus of the Order is on prohibiting the identified “divisive concepts” in “employee workplace trainings.” Based on the current understanding of the Order, these restrictions apply only to workplace trainings for employees – and not classroom academic instruction.

However, the Order’s restrictions on federal grant recipients may have some impact on academic instruction – specifically the funding of it. With respect to federal grant recipients, the Order requires that federal agencies “review their respective grant programs and identify programs” where they should require that the recipient “not use Federal funds to promote” the identified “divisive concepts.”

Based on the plain language of the Order, this requirement would prohibit grant recipients from using federal grant funds to “promote” the identified “divisive concepts” (including by conducting research premised on these concepts). The plain language of the Order does not prevent grant recipients from using other funds (institutional or otherwise) to examine or discuss the identified “divisive concepts” in an academic setting.

In other words, the plain language of the Order does *not* broadly prohibit the university, as a federal contractor or grant recipient, from examining and discussing the identified “divisive concepts” in the classroom as part of academic instruction, but it may restrict what funds may be used to examine such concepts. Accordingly, based on the current

information available, the Office of University Counsel is *not* advising that any student academic instruction be stopped or altered. However, if a department or program is a federal grant recipient, the department/program must be prepared to account for the use of such funding. Beginning November 21, a department/program may receive a “request” for an accounting of the use of the federal grant money or receive notice not to use any of the funding to promote the identified “divisive concepts.” If an agency determines that the federal grant money will be used (or potentially, was used) to promote any of the “divisive concepts,” future access to the grant may be denied.

**Q. How Does the Order Define “Workplace Training” and how do I Know if the Order Applies to my Program or Event?**

**A.** The Order does not define or provide definitive examples of what is or isn’t a “workplace training.”

However, based on the full context of the Order and internal federal agency memoranda, the Office of University Counsel is currently advising that university departments and units clearly differentiate between: (1) official mandatory employee workplace trainings and (2) all other events, programs, sessions and discussions that are geared toward employees, but which are not official mandatory employee trainings. The following actions can be taken to differentiate between workplace training and other programming:

- In any announcement or marketing of a program or event, reserve the words “training”, “workplace training”, and “professional development” for official mandatory university or department/unit trainings. All other offerings should be described as “educational” or “learning” and as “discussions”, “symposiums”, “opportunities”, etc.
- Clearly indicate and promote whether a program is optional and voluntary. This may be helpful in distinguishing an educational event from a required workplace training.
- Pay attention to wording. “Encouraging” attendance could be construed by some employees as more indicative of a workplace training, where their employment terms and conditions would be impacted by their attendance. Instead of “all staff are encouraged to attend”, consider a more general, straightforward statement such as “this program is open to all. ”

Also, pay close attention to how a program or event is financially supported. If it is funded wholly or partially by federal grant money, then it is more likely to draw scrutiny. Going forward, the grantee should receive direct guidance from the funding agency, but it is possible the funding agency may look back on past use of funds in deciding future awards. That’s why departments and units should carefully assess the use of federal grant funds for programming that focuses on “divisive concepts.”

## **Q. What Steps Can I Take Right Now to Assess My Trainings and Programs?**

**A.** Iowa State University remains firmly committed to the principles of diversity and inclusion, its Principles of Community, freedom of expression, and academic freedom. The university will continue to uphold these essential principles and values, while undertaking a good faith effort to comply with the Order to continue access to federal contracts and grants. With this commitment in mind, the following action items can be undertaken now by departments and units:

- Evaluate the language used to describe your programs and events. As detailed above, if your program/event is not an official employee training, do not describe it as such, and instead use words such as “educational”, “learning”, “discussion”, “symposium”, etc. Likewise, differentiate between required employee meetings and trainings and voluntary programming.
- Develop a plan to review current employee workplace trainings to identify potentially violative topics (see the “divisive concepts” identified above).
- Relatedly, review current training and program related communications/marketing to identify “red flag” terms, and consider replacing those terms with equally impactful, non-red-flag terms. According to the Department of Labor, the following terms will “help to identify the type of training prohibited by the Order”: “critical race theory,” “white privilege,” “intersectionality,” “systemic racism,” “positionality,” “racial humility,” and “unconscious bias.” While these terms are not banned, federal agencies are very likely to focus in on such terms for closer scrutiny.

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