

A LOOK AT THE IMPACT OF EXECUTIVE ORDER 13985 ON DIVERSITY, EQUITY, INCLUSION AND ACCESSIBILITY

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As a collective, the Executive Order on Diversity, Equity, Inclusion, and Accessibility (DEIA) in the Federal Workforce is targeted at eradicating systemic injustice resulting from the lack of equity and accessibility in the Federal workforce. Like other systemic problems, the Federal government recognizes that this cannot be resolved through a push-and-go approach. That's why the Biden administration is canvassing for an equally systemic response that would have all government agencies and employers play their part in creating a sustainable solution. Inequality in America has a long and pervasive history. This is why the Biden administration's push to limit and hopefully eradicate its effect sends a refreshing message to the millions of Americans it affects. Limiting factors including access to equal opportunities, unfair treatments resulting from racism, and other harmful prejudices continue to perpetuate a cycle of poverty within certain sections of society.

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Inequity, racism, and unequal opportunity in the workplace are well documented.¹ These vices are kept in place through the differential treatment of people of color in our society. Studies have shown that racial minorities are more likely to be stopped by law enforcement officers, detained pretrial, be leveled with a more severe charge, and handed a harsher sentence than white persons. The discrimination we witness today may not be as imposing as outright slavery, it however still propounds the same evil; that people should not be seen as equals.²

On his first day in office, President Biden signed Executive Order 13985 to build on the federal government's effort at stemming institutional injustice against underserved communities. This order affirms and seeks to enforce through the law that the federal government has a workforce that reflects the diversity of Americans.

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Inequality in America has a long and pervasive history. This is why the Biden administration's push to limit and hopefully eradicate its effect sends a refreshing message to the millions of Americans it affects. A study by PEW Research Center shows how economic inequality has continued to widen even after the recovery from the 2008 recession.³ Limiting factors including access to equal opportunities, unfair treatments resulting from racism, and other harmful prejudices continue to perpetuate a cycle of poverty within certain sections of society.

In the U.S, public White Supremacist events have increased by 123 percent since 2016.⁴ Even more dangerous than these events is the apparent attempt by hate groups seeking to legitimize their ideas through the use of what are culturally mainstream channels. That's why the government has to be resolute in its response.

1) United Nations Secretary-General, "Remarks on Racism in the Workplace," (19 November 2020). <https://www.un.org/sg/en/content/sg/speeches/2020-11-19/remarks-racism-the-workplace>

2) Vera, "An Unjust Burden," (May 2018). <https://www.vera.org/publications/for-the-record-unjust-burden>

3) Pew Research Center, "Most Americans say there is too much economic inequality in the U.S. but Fewer than Half Call it a Top Priority," (9 January 2020). <https://www.pewresearch.org/social-trends/2020/01/09/trends-in-income-and-wealth-inequality/>

4) YouTube video by Global News, "The Rise of White Supremacy and Its New Face," (30 May 2019). https://www.youtube.com/watch?v=KnI9c4_xu8w

Today, racism is no longer a phenomenon within our towns and cities as it's found its way to the borders of "the Land of Liberty... where all men are created equal".⁵ We are all witnesses to how Ukrainian Immigrants are given the red-carpet treatment, unlike their black and colored counterparts. Every refugee has the right to seek asylum and refuge in another state. Still, somehow, the events of the last few months remind us of all that the polity thinks a White refugee is more deserving of sympathy than people of color from Haiti, Syria, or Mexico.⁶

Successive studies have shown the harmful effects of the lack of diversity in management positions and how it creates a chain effect that culminates in more denigrating actions toward the already meager underrepresented section of the workforce.⁷ As a government, maintaining a workforce that reflects the diversity of your citizenry is critical to building trust. In America however, this objective is challenged by the hurtful history of slavery and the Jim crow laws used to mandate racial segregation and permit a system of discrimination across the United States.⁸

The effects of history's injustices are staggering.⁹ Figures published by the National Association of the Advancement of Colored People (NAACP),¹⁰ show that while Black Americans are only 13.4 percent of the U.S population, they make up 22 percent of fatal police shootings, 47 percent of wrongful conviction exonerations, and 35 percent of individuals executed by the death penalty. African Americans are incarcerated in state prisons at a rate five times higher than White Americans.¹¹

While on the campaign trail, Biden's slogan of "Building back better" underlined his vision for creating an American economy more robust and more inclusive than before the Covid pandemic. According to the Biden campaign, every American worker and family will feel welcome to play their part as total participants in this economy. Actions towards actualizing these promises were set in motion on the very

5) National Achieves, "Declaration of Independence: A Transcription,"

<https://www.archives.gov/founding-docs/declaration-transcript>

6) Refworld, "UN High Commissioner for Refugees (UNHCR)".

7) MissionSquare Research Institute, "Diversity, Equity, and Inclusion in the Public Service Workforce," (September 2021). https://www.slge.org/wp-content/uploads/2021/09/deireport_092421.pdf

8) Myers et al., "Government's Equity Imperative," Deloitte (14 September 2021).

<https://www2.deloitte.com/us/en/insights/industry/public-sector/bias-discrimination-racial-equity-government.html>

9) Jennifer Rae Taylor, "A History of Tolerance for Violence Has Laid the Groundwork for Injustice Today," ABA (16 May 2019). https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/black-to-the-future/tolerance-for-violence/

10) NAACP, Criminal Justice Fact Sheet. <https://naacp.org/resources/criminal-justice-fact-sheet>

11) Ashley Nellis, "The Color of Justice: Racial and Ethnic Disparity in State Prisons," The Sentencing Project (13 October 2021). <https://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons/>

first day of his Presidency.

The Biden administration also launched a Whole-of-Government Initiative to Advance Racial Equity.¹² This was intended to serve as a foundation for the work needed to build a fairer and just society under the law. Biden's campaign promise to hit the ground running and prioritize the government's fight against inequity led his administration to push a flurry of executive orders and legislation to combat what he calls the "corrosive stings of racial injustice".¹³

As a democracy, the American government is dependent on solid institutions. The Biden administration is bent on using these institutions to address the problems of equity, inclusion, and accessibility in the national workforce. The Equal Employment Opportunity Commission (EEOC), the Office of Management and Budget (OMB), the Office of Personnel Management (OPM), and the Office of Science and Technology Policy (OSTP) are among the government agencies empowered by the executive orders signed on 25 June 2021.

Barely a week after signing these orders into law, President Biden signed a resolution removing an overhaul to the EEOC reconciliation process.¹⁴ This updated the EEOC rules on unlawful discrimination based on age, disabilities, and genetic information. Initially introduced in the United States Senate, it gives the Federal government more powers to hold employers accountable for workplace discrimination through the EEOC.

As the primary federal agency for enforcing laws against employment discrimination, the EEOC had reported numerous achievements in the 2021 fiscal year. It resolved 138 merit lawsuits and 95.7 percent of all district court resolutions.

For the sake of taking a more balanced approach, the Direct Employers Association remarked that the EEOC has taken a nosedive in its performance during the Biden administration. As an association formed by managers (supposed to be regulated by the EEOC), it's fair to say you have to choose whether or not to take these remarks by the Direct Employers Association with a grain of salt.

12) White House, "Fact Sheet: President-elect Biden's Day One Executive Actions Deliver Relief for Families Across America amid Converging Crises," (20 January 2021). <https://www.whitehouse.gov/briefing-room/statements-releases/2021/01/20/fact-sheet-president-elect-bidens-day-one-executive-actions-deliver-relief-for-families-across-america-amid-converging-crises/>

13) YouTube video by MSNBC. "Biden Announces Executive Orders Focused on 'Diversity, Equity and Inclusion'," (26 January 2021). <https://www.youtube.com/watch?v=BCDpIVXb3SQ>

14) White House, "Remarks by President Biden Signing Three Congressional Review Act Bills into Law: S.J. Res. 13; S. J. Res. 14; and S. J. Res. 15," (30 June 2021). <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/06/30/remarks-by-president-biden-signing-three-congressional-review-act-bills-into-law-s-j-res-13-s-j-res-14-and-s-j-res-15/>

The Office of Management and Budget (OMB) is another vital federal agency necessary for the success of the Biden Administration's push to guarantee DEIA in the federal workforce. The OMB's role in monitoring the Presidency's budget allocations and spending by federal agencies makes it a vital component for successfully implementing DEIA initiatives.¹⁵

Each year, the federal government spends more than \$650 billion, making it the world's largest consumer of goods and services. Executive order 13985 requires agencies to identify and resolve the obstacles underserved communities face in achieving full and equal participation in the U.S economy. So far, OMB through the small business contracting goal has awarded 59 percent of all federal government spending managed by the Millennium Challenge Corporation (MCC) to companies owned by this underserved communities.

The U.S. Office of Personnel Management (OPM) and the Office of Science and Technology Policy (OSTP) are the two other agencies equally instrumental to the success of this initiative. They share a mandate under the 25 June Executive Order to take steps toward improving diversity in federal employment by helping agencies to build and strengthen partnerships with historically black colleges, tribal colleges, Asian American and Pacific Islander-serving institutions, and other learning institutions which predominantly serve underrepresented communities.

Despite sustained efforts by the Biden administration, at creating functional DEIA initiatives, the employment gap between White and Colored communities has not witnessed much change.¹⁶ In April of 2022 for example, the Black unemployment rate fell to a pandemic-era low of 6.2 percent (seeing a further rise from the 5.9 percent of April 2022) while the overall employment rate remained at 3.6 percent.¹⁷ These figures permeate the entire ecosystem as racial undertones were visible even in the recently concluded confirmation hearings for Judge Ketanji Brown Jackson,¹⁸ the first black woman to be nominated to the supreme court.

15) Clinton White House Archives. <https://clintonwhitehouse2.archives.gov/OMB/organization/role.html>

16) Ben Werschul, "Biden hasn't put a dent in the Black employment gap after a year in office," Yahoo Finance (20 January 2022). <https://finance.yahoo.com/news/biden-black-employment-gap-after-a-year-in-office-153939312.html?>

17) U.S. Bureau of Labor Statistics, "Employment Situation Summary", (3 June 2022). <https://www.bls.gov/news.release/empsit.nr0.htm>

18) Seung Min Kim and Marianna Sotomayor, "Race Hovered over Ketanji Brown Jackson's Confirmation Hearing," The Washington Post, 24 March 2022. <https://www.washingtonpost.com/politics/2022/03/24/race-jackson-confirmation-hearing/>

The mixed results recorded by the various agencies responsible for implementing Biden's executive orders on DEIA make it challenging to grade its success. If history is any guide, this administration has a long way to go. Thankfully, it has taken some steps in the right direction.