

September 17, 2020

The Honorable Russell T. Vought  
Director  
Office of Management and Budget  
725 17th Street, NW  
Washington, DC 20503

Re: Response to M-20-34 Memo Regarding Training in the Federal Government

Dear Director Vought:

We write as concerned law professors and Deans regarding your memorandum M-20-34, dated Friday, Sept. 4, 2020, to the heads of Executive departments and agencies (“OMB memo”), which, among other things, denounces federal agencies for engaging in diversity and inclusion efforts. Our primary purpose is to address numerous legal and factual misstatements in the OMB memo. It is tempting to ignore the OMB memo as misinformed because it portrays long-standing bipartisan efforts to provide access to opportunities to women and minorities and trainings in furtherance of those goals as “divisive, anti-American propaganda training sessions.” It is also tempting to dismiss the OMB memo because it ultimately directs the federal agencies to identify and curtail agency spending related to any “propaganda effort” that teaches either “(1) that the United States is an inherently racist or evil country or (2) that any race or ethnicity is inherently racist or evil.” Theoretically, this OMB memo could be simply dispensed with by an immediate and truthful response from each agency head stating that agency training does not remotely involve either of those simplistic mischaracterizations of critical diversity and inclusion efforts.

We fear that, in practice, however, this OMB memo may be used, no matter how disingenuously, by those who are motivated to dismantle efforts to provide legal and legitimate opportunities for women and minorities in the federal workforce. In actuality, diversity and inclusion efforts in federal agencies are bipartisan goals that enhance all of us. In addition to fundamental social justice reasons for such efforts, there are other reasons why the OMB memo is resoundingly off-base: (1) the law requires many federal financial agencies to have diversity and inclusion offices, (2) research shows the business benefit of diversity and inclusion efforts, and (3) these efforts maintain and enhance the morale and dignity of the workforce. Numerous financial institutions throughout corporate America embrace these efforts and traditionally non-partisan federal agencies recognize their benefits. For example, the Securities and Exchange Commission’s (SEC) most recent Diversity and Inclusion Strategic Plan (2020-2022), with an introduction by Chairman Jay Clayton, states: “Research demonstrates that organizations with a diverse workforce, especially within the senior management ranks, outperform their peers over time.” [https://www.sec.gov/files/2020 Diversity and Inclusion Strategic Plan.pdf](https://www.sec.gov/files/2020_Diversity_and_Inclusion_Strategic_Plan.pdf). That same SEC strategic plan, citing the Civil Service Reform Act, also recognizes that federal law “directs all federal agencies to seek to achieve a workforce drawn from all segments of society, to ensure equal employment opportunity, and to integrate diversity and inclusion

as a key component of their human resources strategies.” In addition, the SEC strategic plan, citing Dodd-Frank, states that federal law “specifically requires federal financial regulatory agencies, including the SEC, to develop standards for workforce diversity, and to take specific affirmative steps to seek diversity at all levels of the agency’s workforce in a manner consistent with applicable law.”

The OMB memo is also disturbing because Dodd-Frank section 342 mandated, over ten years ago, that a wide swath of financial agencies create an Office of Minority and Women Inclusion (OMWI). Those agencies—SEC, Treasury, Federal Reserve, CFPB, FDIC, Federal Housing Finance Agency, NCUA, and Comptroller of the Currency—all file yearly publicly available reports with Congress on their activities. So, any suggestion in the OMB memo that diversity and inclusion efforts and training in federal agencies are just coming to light simply does not ring true. For example, here is a link to the SEC’s most recent (FY2019) filing: [https://www.sec.gov/files/OMWI\\_Annual\\_Report\\_FY2019\\_508.pdf](https://www.sec.gov/files/OMWI_Annual_Report_FY2019_508.pdf). Also evident from the SEC’s FY2019 filing is that some of the trainings facilitate much needed pipeline programs. For instance, the SEC FY2019 annual filing includes the following description of some of its activities:

SEC staff in regional offices have been indispensable to the success of the agency’s initiatives to promote workforce diversity and inclusion. They have been especially helpful in carrying out activities prescribed by Section 342(f) of the Dodd-Frank Act for seeking diversity at all levels of the agency’s workforce. For example, staff from the Miami and Chicago regional offices conducted outreach and recruitment on the campuses of several historically black colleges and universities (HBCUs) and Hispanic-serving institutions (HSIs) in their regions in FY 2019, including FIU, Southern University, Florida A&M University, Nova Southeastern University, St. Thomas University, and Roosevelt University.

Moreover, vital benefits of diversity and inclusion training, scholarship, and teaching are highlighted in the September 11, 2020 Joint Statement of the Deans of the University of California Law Schools about the Value of Critical Race Theory found here <https://law.ucla.edu/news/joint-statement-deans-university-california-law-schools-about-value-critical-race-theory-0>.

For all of these reasons, OMB memo M-20-34 should be promptly withdrawn, all attempts to dismantle these federal agency diversity and inclusion efforts should be immediately denounced and rejected as misguided, and the OMB should reassert its support for programs that enhance a diverse and inclusive federal workforce.

Sincerely,

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**Copies to: List of Federal departments and agencies below signatories**

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