

DOD and DOL Take Steps to Stop Implementation of Executive Order 13950 in Response to Nationwide Injunction

January 8, 2021

On January 6, 2021, the U.S. Department of Defense (DOD) issued a revised class deviation, superseding Class Deviation 2021-O0001, issued on November 20, 2020 that implemented Executive Order 13950, Combating Race and Sex Stereotyping. The revised class deviation is intended to ensure that Section 4 of the Executive Order that applied to federal contractors and a related clause, 252.222-7999, added by a November 2020 class deviation, are not implemented or enforced. The revised class deviation was issued in response to the nationwide injunction of Sections 4 and 5 of the Executive Order, which we wrote about in a prior alert, and includes a revised clause 252.222-7999. The revised class deviation includes steps that contracting officers should take to ensure that the November 2020 version of clause 252.222-7999 is not included in solicitations and to amend solicitations that include the clause to substitute a revised version of clause 252.222-7999 that acknowledges the nationwide injunction of Sections 4 and 5 of the Executive Order. In addition, the revised class deviation instructs contracting officers to modify existing contracts to replace the November 2020 version of clause 252.222-7999 with the updated version. Finally, the revised class deviation instructs contracting officers not to enforce any clauses added to contracts as a result of the Executive Order while the nationwide injunction remains in force.

Separately, the U.S. Department of Labor (DOL) Office of Federal Contract Compliance Programs (OFCCP) has posted a notice that it will cease enforcement of the Executive Order, also in response to the nationwide injunction, including ceasing use of its hotline to collect

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information of alleged noncompliance with the Executive Order.

Wiley is monitoring Executive Order 13950 and will collect any further developments in a future alert.