

October 8, 2020

President Donald J. Trump
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Dear President Trump:

We write today regarding the September 22 Executive Order 13950 on “Combating Race and Sex Stereotyping,” which applies to all federal contractors and grant recipients, including colleges and universities.

We strongly oppose race and sex stereotyping, which inhibits efforts to build more inclusive workplaces and communities. But the timing, content, and discordant tone of your Executive Order is creating concern, confusion, and uncertainty for federal contractors and grant recipients across the country.

Higher education, our country’s business and military communities, and other sectors of American society fundamentally agree that promoting and enabling diversity and inclusion are essential to the long-term strength, economic competitiveness, and security of our nation. It is also the right thing to do. The recent tragedies of racial violence underscore now, more than ever, the importance of vigorous efforts to address racism and injustice and to promote diversity and inclusion, as Americans strive together to create a more perfect union.

Workplace diversity and inclusion training programs on our campuses align with federal and state anti-discrimination laws and, at institutions that are government contractors, the non-discrimination-in-employment mandates of Executive Order 11246. Executive Order 13950 is already disrupting the planning and delivery of these programs, creating a chilling effect on the good faith and lawful efforts of campus officials to build and sustain non-discriminatory and non-hostile workplaces and learning communities.

Executive Order 13950 requires an unprecedented expansive review of internal training materials at both public and private entities. At a minimum, a mandate this sweeping and intrusive should be subject to a regulatory process under the Administrative Procedure Act, which would allow affected organizations to ask questions, seek clarifications, and recommend changes before the new requirements take effect.

Executive Order 13950 also undermines the administration’s own broad anti-regulatory agenda, including the January 30, 2017 Executive Order intended to reduce regulations. By requiring colleges and universities with government contracts and grants to send the government any and all documents related to training programs so that they can be scoured for forbidden “divisive concepts,” Executive Order 13950 will create enormous and costly compliance work, particularly for larger universities, where there could be

hundreds or more such training programs conducted at campuses all over the world. Moreover, it contains many ambiguities and gray areas, which means potentially substantial penalties for federal contractors and grantees will be based upon the subjective determinations of federal officials.

Finally, this order appears to conflict directly with the March 21, 2019 Executive Order on “Improving Free Inquiry, Transparency, and Accountability at Colleges and Universities,” which “encourage[s] institutions to foster environments that promote open, intellectually engaging, and diverse debate, including through compliance with the First Amendment for public institutions and compliance with stated institutional policies regarding freedom of speech for private institutions.”^[1] In effect, the Combating Race and Sex Stereotyping Executive Order exercises executive power to limit speech on campuses in ways that undercut the administration’s prior order seeking to increase it.

For these reasons, we ask that Executive Order 13950 be withdrawn.

Sincerely,



Ted Mitchell
President

cc: The Honorable Eugene Scalia, Secretary of Labor

On behalf of:

Accrediting Commission for Community and Junior Colleges
Achieving the Dream
ACPA-College Student Educators International
ACT's Center for Equity in Learning
American Association of Colleges for Teacher Education
American Association of Collegiate Registrars and Admissions Officers
American Association of Community Colleges
American Association of State Colleges and Universities
American Association of Colleges of Nursing
American Association of University Professors
American College Health Association
American Council on Education
American Dental Education Association
American Indian Higher Education Consortium

^[1] Exec. Order No. 13,864, 84 Fed. Reg. 11,401 (Mar. 21, 2019).

APPA, “Leadership in Educational Facilities”
Association of American Colleges and Universities
Association of American Universities
Association of Catholic Colleges and Universities
Association of Community College Trustees
Association of Governing Boards of Universities and Colleges
Association of Jesuit Colleges and Universities
Association of Public and Land-grant Universities
Association of Research Libraries
Association of University Presses
Coalition of Urban and Metropolitan Universities
College and University Professional Association for Human Resources
Common App
Council for Advancement and Support of Education
Council for Higher Education Accreditation
Council for Opportunity in Education
Council of Graduate Schools
Council of Independent Colleges
Council on Governmental Relations
Council on Social Work Education
EDUCAUSE
Higher Learning Commission
Hispanic Association of Colleges and Universities
Middle States Commission on Higher Education
NAFSA: Association of International Educators
NASPA - Student Affairs Administrators in Higher Education
National Association for College Admission Counseling
National Association of College and University Business Officers
National Association of Colleges and Employers
National Association of Independent Colleges and Universities
National Association of Student Financial Aid Administrators
National Collegiate Athletic Association
National Organization of Nurse Practitioner Faculties
New England Commission of Higher Education
Northwest Commission on Colleges and Universities
Phi Beta Kappa Society
Rebuilding America's Middle Class
Southern Association of Colleges and Schools Commission on Colleges
State Higher Education Executive Officers Association
UNCF (United Negro College Fund)
WASC Senior College & University Commission