

October 15, 2020

The President
The White House
Washington, DC 20500

Dear Mr. President:

We write to convey our concerns regarding Executive Order 13950, Combating Race and Sex Stereotyping. Many of our members are federal contractors and subcontractors that will be covered by this E.O. As currently written, we believe the E.O. will create confusion and uncertainty, lead to non-meritorious investigations, and hinder the ability of employers to implement critical programs to promote diversity and combat discrimination in the workplace. We urge you to withdraw the Executive Order and work with the business and nonprofit communities on an approach that would support appropriate workplace training programs.

While it is encouraging that the E.O. states that, "Training employees to create an inclusive workplace is appropriate and beneficial," we fear that the E.O. will diminish the amount of training that takes place. The E.O. seeks to identify specific concepts that would be prohibited, but the description of these concepts leaves considerable ambiguity as to what content would not be permitted in diversity and inclusiveness (D&I) training. Furthermore, there is a great deal of subjectivity around how certain content would be perceived by different individuals. For example, the definition of "divisive concepts" creates many gray areas and will likely result in multiple different interpretations. Because the ultimate threat of debarment is a possible consequence, we have heard from some companies that they are suspending all D&I training. This outcome is contrary to the E.O.'s stated purpose, but an understandable reaction given companies' lack of clear guidance. Thus, the E.O. is already having a broadly chilling effect on legitimate and valuable D&I training companies use to foster inclusive workplaces, help with talent recruitment, and remain competitive in a country with a wide range of different cultures.

Under the E.O., OFCCP has established a hotline to receive complaints from employees who believe they have been subjected to proscribed training. Employers are concerned that this will invite non-meritorious complaints from employees who may be disgruntled about a range of different matters. Also, because of the ambiguity and subjective nature of the key terms that define what training materials are not allowed, whether the training material in question is compliant could very well depend on the outlook of the person filing the complaint. In addition, training sessions often involve discussions between participants. Things heard in these discussions could easily form the basis of a complaint even though they are not part of the official course materials. Even if a company is ultimately found to be in compliance, it will still have to undergo OFCCP's investigative process, which represents a not insignificant burden.

The E.O. is silent with respect to how multi-national companies that are federal contractors should proceed regarding training for their employees outside the U.S. The content of the D&I training for those employees is likely to reflect the local country's attitudes towards

diversity and inclusiveness, and may not align with the E.O.'s restrictions on "divisive concepts." Must these contractors ensure their D&I training in other countries follows the E.O.?

Finally, many of us raised strong concerns with the Obama Administration regarding the use of the federal procurement and contracting process to address issues unrelated to goods or services being purchased by the government. Such an approach effectively creates two sets of rules, one for those companies that do business with the government and another for those that do not. Those same concerns apply equally today. Federal contractors should be left to manage their workforces and workplaces with a minimum amount of interference so long as they are compliant with the law.

Federal contractors are firmly committed to maintaining a diverse and inclusive workforce and to providing their employees the necessary training to reinforce this goal. The Executive Order on Combating Race and Sex Stereotyping does not help contractors in this regard, and in fact creates several significant obstacles and impediments. We urge you to withdraw the E.O. and look forward to working with you on an approach that addresses any concerns that have been raised while continuing to promote efforts to create inclusive workplaces.

Sincerely,

Aeronautical Repair Station Association
Alliance of Arizona Nonprofits
American Alliance of Museums
American Beverage Association
American Chemistry Council
American Council of Engineering Companies
American Council of Life Insurers
American Society of Association Executives
Americans for the Arts
America's SBDC
Arkansas State Chamber/Associated Industries of Arkansas
Associated Industries of Massachusetts - AIM
Association of Art Museum Directors
Association of American Publishers
Auburn Area Chamber of Commerce
Barnesville-Lamar County Chamber of Commerce
Barrow County Chamber of Commerce, Inc.
Bellingham Regional Chamber of Commerce
Bend Chamber of Commerce
Billings Chamber of Commerce
Bolingbrook Area Chamber of Commerce
Bristol Chamber of Commerce
Business Roundtable
Cedar Park Chamber of Commerce

Cedar Rapids Metro Economic Alliance
Center for Nonprofit Advancement (DC)
Center for Nonprofit Excellence (VA)
Center for Non-Profits (NJ)
Chamber Southwest Louisiana
Chandler Chamber of Commerce
Charlotte Regional Business Alliance
Chattanooga Area Chamber of Commerce
Clarion Area Chamber of Business & Industry
Colorado Nonprofit Association
Commerce Lexington Inc.
Common Good Vermont
Consumer Data Industry Association
Council Bluffs Area Chamber of Commerce
Council for Responsible Nutrition
CTIA
Delaware Alliance for Nonprofit Advancement
Detroit Regional Chamber
Downtown Billings Alliance
Edison Electric Institute
Eugene Area Chamber of Commerce
Ferndale Chamber of Commerce
Florida Nonprofit Alliance
Foraker (Alaska)
Forefront (IL)
Genoa Area Chamber of Commerce
Georgia Chamber of Commerce
Greater Akron Chamber
Greater Boston Chamber of Commerce
Greater Cheyenne Chamber of Commerce
Greater Des Moines Partnership
Greater Flagstaff Chamber of Commerce
Greater Fort Lauderdale Chamber of Commerce
Greater Houston LGBT Chamber of Commerce
Greater Kansas City Chamber of Commerce
Greater North Dakota Chamber
Greater Scranton Chamber of Commerce
Greater Springfield Chamber of Commerce
Greater Stillwater Chamber of Commerce
Greater Summerville/Dorchester County Chamber of Commerce
Greater Winter Haven Chamber of Commerce
Hanover Area Chamber of Commerce
Harrisburg Regional Chamber

Henry County Chamber of Commerce
Houston West Chamber of Commerce
Howard County Chamber
HR Policy Association
Huntington Regional Chamber of Commerce
Idaho Nonprofit Center
Independent Sector
International Sign Association
Irving Hispanic Chamber of Commerce
Kentucky Chamber of Commerce
Kentucky Nonprofit Network
Kingsport Chamber
Lansing Regional Chamber
Lincoln Chamber of Commerce
Loudoun County Chamber of Commerce
Maine Association of Nonprofits
Marana Chamber of Commerce
Marshall Area Chamber of Commerce
Maryland Chamber of Commerce
Maryland Nonprofits
Mason City Area Chamber of Commerce
Massachusetts Nonprofit Network
Meridian Chamber of Commerce
Michigan Nonprofit Association
Mid-America LGBT Chamber of Commerce
Minnesota Council of Nonprofits
Mississippi Alliance of Nonprofits and Philanthropy
Momentum Nonprofit Partners (TN)
Montana Nonprofit Association
Montgomery Ohio Chamber of Commerce
Murrieta/Wildomar Chamber of Commerce
Nashville LGBT Chamber
National Association of Manufacturers
National Association of REALTORS®
National Council of Nonprofits
National Investor Relations Institute
National LGBT Chamber of Commerce (NGLCC)
Nebraska Chamber of Commerce & Industry
Network for Strong Communities (MO)
New Hampshire Center for Nonprofits
New Jersey State Chamber of Commerce
New Mexico Thrives
New York Council of Nonprofits, Inc.

Nonprofit Association of Oregon
Nonprofit Association of the Midlands (NE)
Nonprofit New York
North Carolina Center for Nonprofits
North Carolina Chamber
North Port Area Chamber of Commerce
North Texas Commission
North Texas LGBT Chamber of Commerce
Oklahoma Center for Nonprofits
Oregon Business & Industry
OUT Georgia Business Alliance
Pennsylvania Association of Nonprofit Organizations
Perry County Chamber of Commerce
Plexus LGBT + Allied Chamber of Commerce
Plexus LGBT Chamber of Commerce
Providers' Council (MA)
Puerto Rico Chamber of Commerce
Puyallup Sumner Chamber of Commerce
Santa Fe Springs Chamber of Commerce
Seattle Southside Chamber of Commerce
Selma and Dallas County Chamber of Commerce and Tourism
Information
Shakopee Area Chamber of Commerce
Software & Information Industry Association
Solon Chamber of Commerce
Southern Ohio Chamber Alliance
Tacoma-Pierce County Chamber
Tampa Bay LGBT Chamber
The American Institute of Architects
The Associated General Contractors of America
The Chamber, Leading Business in Cabarrus
The Institute for Workplace Equality
The National Business League, Inc.
The Slone Group
Together SC
Tompkins County Chamber of Commerce
Troy Area Chamber of Commerce
Tucson Metro Chamber
Tulsa Regional Chamber
Tyler Area Chamber of Commerce
United Philanthropy Forum
U.S. Chamber of Commerce
USTelecom - The Broadband Association
Utah Nonprofits Association

Vegas Chamber
Vinyl Institute
Washington Nonprofits
Wake Forest Area Chamber of Commerce
Waverly Chamber of Commerce/Main Street
West Virginia Chamber of Commerce
Wine & Spirits Wholesalers of America
Winona Area Chamber of Commerce
Wyoming Nonprofit Network

cc: The Honorable Eugene Scalia, Secretary of Labor