

December 6, 2021

The Honorable Adam Smith
Chairman
Armed Services Committee
U.S. House of Representatives
Washington, DC 20515

The Honorable Mike Rogers
Ranking Member
Armed Services Committee
U.S. House of Representatives
Washington, DC 20515

The Honorable Jack Reed
Chairman
Committee on Armed Services
United States Senate
Washington, DC 20510

The Honorable James Inhofe
Ranking Member
Committee on Armed Services
United States Senate
Washington, DC 20510

The Honorable Bobby Scott
Chairman
Education and Labor Committee
U.S. House of Representatives
Washington, DC 20515

The Honorable Virginia Foxx
Ranking Member
Education and Labor Committee
U.S. House of Representatives
Washington, DC 20515

The Honorable Patty Murray
Chairwoman
Health, Education, Labor, and Pensions
Committee
United States Senate
Washington, DC 20510

The Honorable Richard Burr
Ranking Member
Health, Education, Labor, and Pensions
Committee
United States Senate
Washington, DC 20510

Dear Chairs and Ranking Members,

The American Council on Education (ACE) and the undersigned higher education associations write in opposition to Section 818 “Department of Defense (DOD) contractor professional training material disclosure requirements” included in the FY 2022 National Defense Authorization Act (S. 2792). The provision, which would become effective immediately upon passage of a conferenced bill, would require any DOD contractor to make publicly available online all “diversity, equal opportunity, equity, inclusion, or tolerance training materials or internal policies, including syllabi, online sources, suggested reading lists, guest speakers and lecturers, instructor lists, internal policy memos, workshop descriptions, outside organizational funding, or other educational or professional materials for review and identification of Critical Race Theory or similar theoretical instruction in a timely manner.”

Section 818 would impact hundreds of institutions of higher education in the United States and require expansive and intrusive new disclosures of internal materials with no specific purpose related to the work of DOD contractors. The new reporting requirement would likely capture

colleges and universities that hold research and development (R&D) contracts as well as those that hold contracts to provide educational services. The sweeping scope of this provision would lead to costly and burdensome compliance for no clear purpose. Universities and colleges have multiple schools and other administrative and academic units, as well as dozens, if not hundreds, of courses from which policies, reading lists, guest speakers lists, syllabi, and other information would potentially have to be disclosed, despite the fact that the topics these items focus on are totally unrelated to critical race theory.

In addition, Section 818 would not advance national security. Instead, it would simply waste time and money while creating a chilling effect on the good faith, reasonable and lawful efforts of colleges and universities (acting as federal contractors), including businesses, universities and other nonprofit organizations, to build and sustain non-discriminatory, inclusive and diverse workplaces, and learning communities. Based on the language included in the Senate-passed legislation, one university has estimated that it would take hundreds of staff hours to comply. This would result in less time spent supporting students and researchers, as well as less time for education and research activities. How the Department of Defense would evaluate and use this information is unknown.

The provision also raises enormous free speech concerns for colleges and universities and, in turn, our nation. This would be an unprecedented intrusion into the academic mission and administration of institutions of higher education. The Department of Education has been specifically barred from intruding in the academic programs of institutions because of the long-held and well-established view that the federal government should not dictate how and what is taught in our institutions, primarily over fears of government censorship and interference with academic freedom and autonomy.¹

Requiring universities to aggregate and make publicly available academic information such as syllabi and names of guest speakers also raises important questions about how the government could use this information and what conditions it could impose on universities based on the information. Section 818 opens the door to potentially inappropriate and chilling incursions of academic autonomy in which the federal government requires public disclosure of academic information from any field of study that politicians may take issue with. This could potentially lead to questions and conditions about what faculty may or may not teach and who faculty and student groups may or may not invite to speak in the classroom and other academic forums. Because the provision would apply to guest speakers, including speakers invited by student groups, colleges and universities would likely need to adopt a policy requiring all student groups to report all guest speakers in order to comply with the disclosure requirement. Inevitably, this will lead to inappropriate infringements on the First Amendment rights of faculty, staff and students that could spawn a flood of litigation.

Moreover, Section 818 also conflicts with the March 21, 2019 White House Executive Order on “Improving Free Inquiry, Transparency, and Accountability at Colleges and Universities,” which “encourage[s] institutions to foster environments that promote open, intellectually

¹ 20 U.S. Code § 1232a - Prohibition against Federal control of education

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.”² In effect, Section 818 exercises federal power which will inhibit speech on campuses in ways that undercut the stated goal of this Executive Order.

And finally, promoting and enabling diversity and inclusion are essential to the long-term strength, economic competitiveness, and security of our nation. This provision would work against those goals. We therefore urge that this provision be stricken from the final Fiscal Year (FY) 2022 National Defense Authorization Act (NDAA) conference agreement.

Sincerely,

A handwritten signature in black ink, appearing to read "Ted Mitchell". The signature is stylized and cursive.

Ted Mitchell
President

On behalf of:

American Association of Community Colleges
American Council on Education
Association of American Universities
Association of Public and Land-grant Universities
National Association of Independent Colleges and Universities

² Exec. Order No. 13864, 84 Fed. Reg. 11,401 (Mar. 21, 2019).