November 29, 2018

The Honorable Alex Azar
Secretary
U.S. Department of Health & Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Secretary Azar,

On behalf of the organizations listed below, we write to express our serious concerns with recent reports of a proposal under consideration by your agency to narrowly define sex. Our associations believe that the federal definition of sex under discussion, which is so narrowly drafted as to exclude the identities of numerous faculty, staff and students already acknowledged by our institutions, is an unnecessary and unreasonable step that is bound to cause fear and confusion.

In the simplest terms, we believe that higher education and the students we educate are not served by a federal definition that limits or restricts the identity of an individual. While all campuses differ in their specific approaches, it is important to recognize that they are best suited to determine how they serve their students, consistent with the law. Many institutions, reflecting their missions, have chosen to embrace transgender and gender non-binary individuals and have tailored their policies in ways that go beyond their legal obligations, but are unquestionably permissible under federal, state and local laws. These efforts mirror the individual values and goals of each institution.

Any definition developed by your agency, which would come with the imprimatur of the federal government, could have an outsized influence on the actions of students and institutions. Such a change could cause needless confusion, uncertainty and anxiety about protections afforded to transgender and gender non-binary individuals on our campuses under federal, state and local law, particularly Title IX of the Education Amendments of 1972 and Title VII of the Civil Rights Act.

Far from improving how institutions serve their communities, the approach under consideration by your agency could result in some members of those communities being perceived as less equal, and entitled to fewer rights and processes than their peers.

For these reasons, we oppose any efforts to promulgate such a definition and urge you not take this step.
Sincerely,

Ted Mitchell
President

On behalf of:

ACPA-College Student Educators International
ACT
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 College Health Association
American Council on Education
American Dental Education Association
APPA, Leadership in Educational Facilities
Association of American Colleges and Universities
Association of American Medical Colleges
Association of American Universities
Association of Community College Trustees
Association of Governing Boards of Universities and Colleges
Association of Public and Land-grant Universities
College and University Professional Association for Human Resources
Council for Advancement and Support of Education
Council of Graduate Schools
EDUCAUSE
NAFSA: Association of International Educators
NASPA - Student Affairs Administrators in Higher Education
National Association for College Admission Counseling
National Association for Equal Opportunity in Higher Education
National Association of Colleges and Employers
National Association of Independent Colleges and Universities
The College Board
The Common Application
UPCEA