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July 12, 2017

Ms. Wendy Macias  
U.S. Department of Education  
400 Maryland Avenue, SW  
Room 6C111  
Washington, D.C. 20202

RE: Docket ID: ED-2017-OPE-0076

Dear Ms. Macias:

On behalf of the over 600 member institutions of the American Association of Cosmetology Schools (AACS), the students these institutions prepare to become licensed professionals in the thriving U.S. beauty and wellness industry, and the employers who rely on these trained professionals to meet the increasing demand for spa and salon services, we respectfully submit comments to the June 16, 2017 Notice of Intent to Establish Negotiated Rulemaking Committees and the ability to comment on the topics suggested by the U.S. Department of Education.

AACS is a national, non-profit association founded in 1924. Our members educate students to work in the beauty and wellness industry. These include courses in cosmetology, hair design, skin, nail, barbering and massage therapy. Nearly all of these programs result in a licensed outcome, i.e. graduates work in a profession that is licensed by the state in which they work. In addition, these programs are regulated by the states, with varying requirements governing length of instruction, curriculum, faculty, examinations, and licensure prerequisites. AACS members include schools of all sizes, but the overwhelming majority are small, single location schools owned by families or individuals.

Our comments focus on two of the three topics the Department has recommended for consideration by the committees – Gainful Employment (GE) and Borrower Defense to Repayment (BDR). We have added comments regarding one additional topic – Proprietary School/Service Audit Guidelines. We hope the Department will seek to postpone these guidelines as soon as possible.

Our comments may not represent all the comments or recommendations that each AACS member school may have individually submitted or other topics which they may request for inclusion. And, we reserve the right to raise, with the Department and other stakeholders, any

other issue associated with this rulemaking deemed problematic even if not covered specifically in these comments.

## **I. Executive Summary**

AACS applauds the Department of Education and the Administration on its decision to establish two new negotiated rulemaking committees to revisit the GE and BDR regulations. Both of these rules are harmful, overly prescriptive and punitive as currently drafted.

We support the development of regulations that are equitable, rational, well-conceived and thoughtfully constructed. We have always welcomed the opportunity to partner with the Department and all of the higher education community, to develop meaningful regulations that inform students and hold schools accountable.

Recent court decisions related to both GE and BDR, the concerns expressed by all sectors and types of institutions of higher education-regarding the policies and processes themselves, their sporadic roll-out, awkward implementation, and the resulting inaccuracy of the data, justify reopening these regulations for review and reform.

For all of these reasons, we submit the following comments and recommendations for consideration and as a possible starting point for the latest round of negotiations.

## **II. Gainful Employment**

AACS recently challenged the GE regulations through litigation. We did so reluctantly and only as a last resort. We had no other choice given the unique characteristics of our industry. We expressed our concerns regarding the inequity of the regulation repeatedly. However, the final rule did not take those concerns into account. GE's failure to properly account for underreported income unfairly jeopardized access for students seeking an education programs offered by our members.

The Court acknowledged these shortcomings and found that the alternate earnings appeal process was not an adequate remedy. We greatly appreciate that the Department, in its July 5, 2017, Federal Register Notice, made the decision to extend the initial relief and postponement of the appeals process to all programs and to postpone certain publication requirements related to the flawed 2017 GE Disclosure Template.

While we look forward to the additional guidance the Department noted in last Wednesday's Federal Register Notice, we wish to offer the following recommendations as the Department attempts to develop regulations defining "gainful employment in a recognized occupation."

To begin, we urge the Department to abandon its prior attempts to establish program-level eligibility requirements based upon prior cohorts of graduates' debt level and income so soon after their entry into the workforce.

As an alternative, we ask the Department to use contemporaneous Bureau of Labor Statistics information on future earnings compared to a graduate's debt as the basis for consumer information disclosures, but not as determinates of institutional program eligibility.

Such an approach would immediately resolve many of the concerns related to both policies. It would also negate the integrity issues related to the accuracy of Social Security Administration data, and the inability of a school to appeal the SSA earnings themselves.

This approach, especially given that schools who utilized the current appeals process are showing far more favorable earnings than those procured by the SSA, would still provide prospective students the knowledge necessary to make an informed decision about the range of potential earnings of their chosen profession.

Another alternative, which would tie two key pieces of higher education policy to one another, would be the use of earnings data required for collection under the Workforce Innovation and Opportunity Act. Such data should resolve any concerns with the use of national BLS data, even though regional data is also available.

Finally, the Consumer Disclosures should be streamlined. The current disclosure template uses misleading on-time completion rates, median debt and student earnings amounts that are inconsistent with those same definitions elsewhere in the higher education regulations. The Disclosures must be consistent to promote consumer understanding.

### **III. Borrower Defense to Repayment**

We continue to support the protection of students who have legitimate claims of illegal, unfair, or deceptive practices by colleges. And, we believe that the existing regulations provide the means for resolution of these claims. A complete rewrite of the original, pre-2017 BDR regulation and the financial responsibility regulations is not required to achieve this goal.

The Department should consider the development of a federal standard for resolution of BDR claims. The process should ensure the participation of all affected parties including, students, schools and the Department of Education.

One possibility to consider could be a new hybrid process, which seeks provides institutions with the ability to work with students to address concerns through mediation, but also ensures that, when applicable, the student has the ability to seek review and appropriate resolution from the Department. This process could have a timeline established that would ensure a student's complaint is resolved expeditiously, for example within a calendar year. It could include a defined period of time (e.g., 90 days) for the institution to first work with the student to remedy the concern, and if unable to do so, would then allow the student to seek review and determination by the Department within a prescribed period of time (i.e., 180-270 days). A process like this would allow the student and the school the opportunity to resolve the claim more quickly and would conserve limited Department resources.

Whatever standard or process is considered, we urge the Department to limit the negotiated rule making session solely to efforts to address the BDR process. This is a significant issue by itself, and too important to get sidetracked with issues such as loan repayment rates, arbitration, and modifications to the financial responsibility standards. Those parts of the current rule are outside the scope of the BDR process. They should not have been part of the rule and should be removed from regulation.

### **IV. Proprietary School/Service Audit Guidelines**

Although not included in the Department's Notice, we urge the Department to address another topic which urgently needs attention. While many were focused on the July 1, 2017 deadlines related to GE and BDR, AACSB has been urging our members not to lose sight of the considerable administrative burden and fiscal impact related to the July 1<sup>st</sup> effective date of implementation to the Guide for Audits of Proprietary Schools.

While the release of the audit guide was long overdue and needed, many of the new requirements contained within the prior Administration's guidance are highly problematic. The new standards are complex and confusing even to highly experienced auditors, and have the very real potential to significantly increase the administrative burden, time and the cost of the audits.

Working with our member schools' auditors, we are in the process of developing a list of specific areas that both institutions and the auditors have concerns within the new guidance. We would welcome the opportunity to share these findings with the Department for further consideration.

We urge the Department to consider the most expedient means of addressing these issues.

#### **IV. Conclusion**

Thank you for providing AACCS with the opportunity to present these recommendations in response to the 2017 Notice of Intent to Establish Negotiated Rulemaking Committees and the ability to comment on the topics suggested by the Department.

AACCS hopes that these comments and recommendations will help form the basis for the future announcements of the topics to be considered by each negotiating committee.

Once published, AACCS will submit nominations of experts capable of assisting the Department in working towards the development of meaningful regulations, individuals who will negotiate in good faith with the goal of achieving consensus.

When selecting negotiators, we ask the Department to provide a separate seat for our community. We recommend that primary and alternate negotiators be selected to represent each of the following constituencies: large privately owned colleges, small privately owned colleges, the beauty and wellness education sector, and college trade associations. The beauty and wellness education sector should be separately represented with its own primary and alternate negotiator to ensure that the unique issues of our community, including clock hours, state licensure, and income reporting are adequately considered. While we did provide an alternate negotiator in the original negotiations on GE, we did not have a representative the subsequent negotiations. Had we been included in the second negotiate rulemaking process for GE, the need for litigation might have been avoided.

Thank you for the opportunity to submit these comments. We look forward to working with the Department in this process.

Sincerely,



O. David Jackson  
Executive Director, AACCS