May 27, 2014

U.S. Department of Education
ATTN: Ashley Higgins
1990 K Street, NW – Room 8037
Washington, DC 20006-8502

RE: Docket ID: ED-2014-OPE-0039

Dear Ms. Higgins:

On behalf of the American Association of Cosmetology Schools (AACS), our membership, and most importantly, the approximately 100,000 students that our 1,025 private, for-profit institutions of higher education prepare annually for rewarding, professional careers in the multi-billion dollar cosmetology industry, we are honored to submit the following comments in response to the *Program Integrity: Gainful Employment* Notice of Proposed Rulemaking (NPRM) published in the Federal Register on March 25, 2014.

AACS is proud to represent a very unique and diverse membership, with characteristics we believe are distinctive. These characteristics often times lend themselves to views and opinions different from the broader higher-education community as well as other portions of the for-profit community. Such is the case with some of the proposals contained within this comprehensive response to the Department's most recent attempts to develop regulations defining "gainful employment in a recognized occupation."

It is our hope that the Department will pay particular attention to the impact that these regulations will have upon students attending our institutions which:

- remain predominately small businesses, operated by families and independent owners;
- specifically measure program length in clock hours;
- have program lengths dictated by state entities authorized to recognize programs beyond the secondary level; and
- provide education and training which leads directly to state licensure which is once again regulated and overseen by external state entities.

We appreciate the Secretary and the Department's recognition of these unique characteristics in the past, including the selection of one of our nominees as a representative of the for-profit community as an Alternate Negotiator in the 2013 Gainful Employment Federal Negotiated Rulemaking process. We believe that our representative brought a number of key issues to light throughout the negotiations, including some reflected in the Department's Notice.

To that end, AACS supports many of the provisions contained in the NPRM, and applauds the Department for many favorable changes included in the proposed regulations. We note that many of these were the result of hard work and intense discussions throughout the process, and that still others are revisions which were not included in the draft(s) deliberated as a part of the 2013 Gainful Employment Federal Negotiated Rulemaking.

Unfortunately, despite these revisions, AACS remains steadfast in our opposition to the Department's overall efforts to regulate in this area.

These views are only enhanced by the Department's decision to yet again move forward with the pursuit of a regulation for which it has:

- yet to provide the affected parties with complete and comprehensive data for all programs subject to the regulation;
- failed to take into consideration the disproportionate impact of the proposed regulation on programs who enroll and seek to provide access to postsecondary education to students from lower socio-economic and more at-risk backgrounds; and
- is based upon a number of unproven perceptions and assertions specifically targeting the for-profit industry which are not only unjust, but inaccurate and biased misrepresentations of a sector of education which provides students with a quality education and access to licensed employment in occupations which are projected to out-pace average job-growth over the next decade according to the U.S. Department of Labor.

Given these concerns, we strongly urge that the Department cease any further pursuit of the promulgation of a final regulation until such time as the Department provides to all affected parties:

- Complete and comprehensive data for each program subject to the regulations, including –
  - Debt-to-Earnings (D/E) data for both two-year and four-year cohort periods;
  - D/E data indicating the effects of the showing of mitigating circumstances provision on the eligibility of programs broken down by institutional type and program length;
  - All relevant pCDR data; and
  - Specific, detailed information explaining why data is unavailable for any program in which either the two D/E or pCDR metrics are not available; and

- An analysis of the effects of the regulations on students based upon:
  - Dependent vs. Independent Status;
  - Proportion of Pell Eligibility Population Served by the Institution; and
  - Level of Borrowing in Relation to Program Length.

AACS' rationale for these requests and our concerns are contained in our General Response immediately following this cover letter.

If the Administration and the Department disregard AACS' request for further analysis and continue to pursue the development of a final regulatory package for publication by the November 1, 2014 Master Calendar deadline, and subsequent effective date of implementation of the regulation on July 1, 2015, AACS has developed a comprehensive, section-by-section response addressing recommended revisions to the NPRM which is also included with the cover letter and General Response.

We hope that the Department understands that AACS and its membership are always willing to work with the Department, and believe that past collaborations have resulted in improved regulations which were fair and equitable. We hope to do so once again, but are finding it harder and harder to believe that such a goal is attainable when the Administration and the Department continue to change the goals and objectives of their regulations, levy false and misleading accusations against our sector and our community, and attempt to use propaganda, not fact as justification for doing so.

Under this new paradigm we feel sadly that the outcome will be less certain and also less fair and equitable. However, we simply cannot sit by without responding.

To that end, we hope that the Administration and the Department will give serious consideration to this response, and will reassess both the tone and direction of the NPRM and the proposed regulation.

Regardless, we remain committed to working with both the Administration and the Department on the development of fair and equitable regulations, regulations which protect the integrity of the student financial aid programs, address needed reforms, and promote access to a quality higher education for all students. Unfortunately, this regulation fails on all counts and is therefore opposed by this Association and its membership.

Sincerely,

Jim Cox Executive Director	Don Yearwood President	Gregory H. Jones Chairman Government Relations Committee

Enclosures

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As noted in AACS' cover letter, we believe that the Administration and the Department are rushing to develop and implement regulations that have not yet be thoroughly developed and vetted, and are requesting that the Department refrain from any further efforts to promulgate final regulations in this area until such time as the Department provides all affected parties:

- Complete and comprehensive data for each program subject to the regulations, including –
  - Debt-to-Earnings (D/E) data for both two-year and four-year cohort periods;
  - D/E data indicating the effects of the showing of mitigating circumstances provision on the eligibility of programs broken down by institutional type and program length;
  - All relevant pCDR data; and
  - Specific, detailed information explaining why data is unavailable for any program in which either the two D/E or pCDR metrics are not available; and
- An analysis of the effects of the regulations on students based upon:
  - Dependent vs. Independent Status;
  - Proportion of Pell Eligibility Population Served by the Institution; and
  - Level of Borrowing in Relation to Program Length.

Detailed throughout the remainder of this section are AACS' justification and rationale for making these requests. It includes our concerns, proposed regulatory revisions (where applicable) for consideration, and, in many cases, additional questions – similar to those the Department asked stakeholders to respond to as part of the NPRM – which we believe the Department must provide the affected parties with information and answers to, allowing them time to assimilate the information and respond, BEFORE final regulations are published.

<u>Incomplete & Potentially Flawed Data</u>

AACS' primary concern is that the Department is seeking to promulgate a final rule without complete and comprehensive data showing all affected parties the potential impact on the programs subject to the rule.

As it did with the Department's release of the prior 2010 GE Informational Rates, upon publication and release of the more recent 2012 GE Informational Rates in conjunction with the NPRM, AACS took it upon itself to thoroughly review and analyze the data.

It was our hope that the more recent Informational Rates would provide substantially more detail than the prior data, which we discussed with key Department officials on several occasions (dating all the way back to the Department's 2011 FSA Conference and many other subsequent conversations including each of the Regional Field Hearings leading into the 2013 GE Federal

Negotiations) had considerable omissions and vacancies where the information simply wasn't provided.

Unfortunately, upon review of the new 2012 Informational Rates, AACS once again came across the same problems as it had noted in the past, nothing in the presentation of the data had changed or improved.

The Department's data is once again incomplete providing only 58% of the data for the D/E metrics for cosmetology related disciplines and only 72% of the pCDR data (see chart below) and, as was the case previously the Department failed to include data for both of the applicable cohort periods the Department is proposing as the basis for eligibility determinations (two-year period and four-year period).

Program	Missing or Unavailable Data	Missing or Unavailable Data
Cosmetology	31%	25%
Barbering	49%	42%
Esthetician	30%	12%
Nail Technician	57%	33%
Median % of Missing or Unavailable Data	**42%**	**28%**

Source: U.S. Department of Education's 2012 GE Informational Data – Released March 25, 2014
(Note: AACS' Comprehensive Analysis of the 2012 Gainful Employment Informational Rates for Cosmetology & Related Disciplines is available upon request. It includes comparative data not only on the disciplines in the aggregate, but comparisons based upon type of program, program length, and for-profit institutions vs. AACS member institutions. We are proud to note that in comparison to the broader for-profit community, AACS has better results – an indication we believe that our Association and its membership are performing at levels of compliance above average.)

To say this was a disappointment would be an understatement. Given all of our conversations and pleas with the Department to provide all of the data, AACS was and still is shocked that the Department did not provide complete and comprehensive information with the NPRM.

Simply stated, AACS believes that without this information, no institution is capable of truly making an informed decisions regarding their programs' future eligibility and can only provide responses to the NPRM based upon speculation. This is not the way in which institutions should be forced to respond to such an important regulation, a regulation in which programmatic eligibility – and in the case of our institutions, which are focused upon a single discipline, institutional eligibility – is potentially at risk.

Furthermore, AACS is still awaiting answers from the Department regarding questions which have plagued our community since the release of the first set of incomplete data and remain with the release of the subsequent data.

Chief among them is a request for the Department to explain how such an overwhelming proportion of the programs within the cosmetology disciplines – as well as other disciplines - can have Debt-to-Discretionary Earnings percentages at or above 100%.

Conversations AACS has had with several statisticians suggest that this result is a "false positive", which we understand to mean a calculation which is flawed and therefore invalid without modification.

On several occasions we have brought this to the attention of the Department, but have yet to receive any response as to how or why the calculation of this particular metric results in a percentage at or above 100% and falls well outside any of the proposed thresholds (passing, zone, or failing).

AACS believes that one potential source of the problem may well be the Department and Social Security Administration's (SSA) earnings calculation and the inclusion in the aggregate data of individuals who are defaulted to $0 earnings.

It is our understanding that individuals who fall into this category of "$0 earnings" include not only the absence of earnings presented by the filer (potentially self-employed individuals either filing under a different category other than one of our CIP code disciplines), but also individuals who do file, but are not required to report their income because it is below IRS established norms which default in the system to "$0 earnings."

AACS, and other organizations who have sought clarification and guidance from the Department and SSA regarding this concern but have yet to receive clear guidance on how these cases are handled within the SSA's process. But it seems clear based upon the calculations and the produced outcomes that our institutions our unjustly penalized.

The SSA has acknowledged their inability to capture all self-employment earnings under the Master Earnings File, and that these limitations and complexities are an issue. However, they have not offered any remedies to address these concerns.

AACS believes that this and potentially other issues related to the SSA's processes and procedures are producing flawed and inaccurate aggregate earnings data, data which when used to determine the D/E ratios becomes even more flawed and problematic.

Given these concerns, before any final regulations are promulgated, AACS requests the opportunity to meet with the appropriate Department and SSA officials to discuss the procedures and complete calculation methodology used to establish the aggregate mean

and median rates, and to discuss the ways in which these procedures and calculations should be modified in order to provide more accurate results and calculations.

At a minimum, AACS urges the Department and the SSA to work with us to consider alternative means of addressing "$0 earnings" in the development of the aggregate earnings calculations.

Student Demographics

Throughout the negotiations AACS' representative and other non-federal negotiators repeatedly attempted to bring to the Department's attention the fact that the proposed regulation is heavily weighted against those institutions who chose to enroll lower socioeconomic, more at-risk student populations – including but not limited to single parents, working adults, and minority students.

Clear, unambiguous examples of how two identical programs, offering the same curriculum, providing the same level of student support services, and leading to the same industry recognized credential, could end up with drastically different D/E and pCDR metrics based on nothing more than the students enrolled (e.g. dependent vs. independent) were presented.

In light of these conversations, AACS specifically requested that the Department conduct an analysis of this concern during the negotiations. The Department stated that while they were unlikely to be able to complete a study and analysis during the negotiations, they did acknowledge the point, and said that they would be willing to consider alternative approaches as necessary depending upon the outcome of the negotiations and corresponding regulations.

Given the proposals contained in the NPRM, AACS is not only requesting that the Department complete the aforementioned analysis, we are proposing revisions to the regulations specifically designed to address our concerns.

We believe that the Department must take student demographics into consideration in the pursuit of these regulations and offer the following revisions for consideration and inclusion on the final regulation.

AACS' Proposed Regulatory Revisions:

§668.403 Gainful employment program framework.

The Secretary determines whether a GE program provides training that prepares a student for gainful employment in a recognized occupation pursuant to this section.

(a) Debt-to-earnings rates. For each award year, the Secretary, pursuant to §668.404, calculates two D/E rates, one rate based on discretionary income (the discretionary income rate) and the

other rate based on annual earnings (the annual earnings rate), for each GE program offered by an institution. Based on the GE program's D/E rates, the Secretary determines that the GE program is a ~~passing program,~~ failing program~~, zone program,~~ or ineligible program as defined in paragraphs ~~(b) through (c)~~ "(b) and (c)" of this section.

~~*(b) Passing program. A GE program for which the--*~~
~~*(1) Discretionary income rate is equal to or less than 20 percent; or*~~
~~*(2) Annual earnings rate is equal to or less than eight percent.*~~

~~*(c) Failing*~~ *"(b) Failing" program. A GE program for which the--*
(1) Discretionary income rate is greater than 20 percent; and
~~*(2) Annual earnings rate is greater than 12 percent.*~~
"(2) Annual earnings rate is:
(i) greater eight percent if less than 25% of students were Pell eligible or independent;
(ii) greater than 10% if more that 25% but less than 50% were Pell eligible or independent;
(iii) greater than 12% if more than 50% but less than 75% were Pell eligible or independent; or
(iv) greater than 14% if 75% or more were Pell eligible or independent.
Percentage of Pell eligible and independent students is calculated based on students completing a GE program in the most recently completed award year."

~~*(d) Zone program. A GE program that is not a passing program and for which the--*~~
~~*(1) Discretionary income rate is greater than 20 percent but less than or equal to 30 percent; or*~~
~~*(2) Annual earnings rate is greater than eight percent but less than or equal to 12 percent.*~~

~~*(e)*~~ *"(c)" Ineligible program.* ~~*A GE program that--*~~
~~*(1) Is a failing program in two out of any three consecutive award years for which D/E rates are calculated; or*~~
~~*(2) Is not a passing program in any of four consecutive award years for which D/E rates are calculated.*~~

"A GE program that is a failing program in three out of any four consecutive award years for which D/E rates are calculated."

Student Behavior & Accountability

Student Demographics are only a portion of the critical role the student plays in an institution and their programs' ability to comply with the proposed regulation.

AACS continues to express our considerable concerns and frustration with the lack of recognition of the impact students' behavior and accountability – or lack thereof – has on compliance as well.

Consider the following:

Who decides to borrow?	THE STUDENT
Who decides how much to borrow?	THE STUDENT
Who decides to sit for licensure examination?	THE STUDENT
Who decides if they will seek employment once licensed?	THE STUDENT
Who decides where they will work?	THE STUDENT
Who decides to pay back their loan?	THE STUDENT
Who reports their income accurately/inaccurately?	THE STUDENT

Yet despite all of these decisions made by THE STUDENT, outside of the control of the institution, who is solely held responsible for compliance with the student-centric metrics –

THE INSTITUTION, NOT THE STUDENT.

While we recognize that it is blaspheme to some to suggest that the students certainly have some responsibilities for their own actions, and that there are personal consequences when the student fails to own up to their responsibilities, the blunt instrument that is Gainful Employment places all of the burden on the institution, even though the very decisions that ultimately determine compliance are driven by things outside of our control – and it doesn't stop with the student.

Institutions cannot control other external factors either (e.g. the economy, employer hiring practices and salaries, the loan servicing and collection efforts of the Department's servicers etc.), but yet the regulations and the Department's own statements are that the best way for an institution to comply with these regulations is to restrict your enrollments, reduce your tuition, and seek out higher paying placements.

What does any of this have to do with educational quality and the fulfillment of an institution's mission to prepare students within our community to successfully pass licensure exams required to enter the workforce and seek entry-level employment in a professional industry?

<u>Administration/Department Bias</u>

AACS is extremely frustrated and angered by the tone and tenure of the most recent NPRM, the evolving goals and objectives of the rule as detailed in the Executive Summary's new list of concerns, and the egregious assertions directed solely at the for-profit community as part of the statement of purpose and rationale for the regulations are highly problematic.

Let us first address the Department's concerns with a number of GE programs, which the Executive Summary notes is what is driving the new accountability and transparency frameworks. The Department states:

> The Department is concerned that a number of GE programs:
> (1) do not train students in the skills they need to obtain and maintain jobs in the occupation for which the program purports to provide training;
> (2) provide training for an occupation for which low wages do not justify program costs, and
> (3) are experiencing a high number of withdrawals or "churn" because relatively large numbers of students enroll but few, or none, complete the program, which can often lead to default.

AACS believes that the Administration and the Department have exceeded their authority in the statement of its most recent goals and objectives in response to their concerns.

First and foremost, AACS is not aware of any statutory or regulatory authority granted to the Department to ensure that a program whose mission is to provide students with the skills necessary to enter the workforce, in our case with a license required to do so, is responsible for a student maintaining for any extended period of time (six year implied in the discussions surrounding the statement of purpose) a job in that profession.

Second, we take considerable offense to the Department's assertion, and the now proven misrepresentation of one of the two justifications of wages (average wages of high school drop outs), that graduates from programs like those that we offer are substandard and fail to provide wages justifying programs costs.

In its comparison the Department failed to take into consideration (1) comparable number of years in workforce and (2) comparable hours per week worked, among many other necessary controls that should have been included to present valid comparability studies. Thus the Department's entire assertion is erroneous.

Furthermore, regardless of one's educational attainment, there is a direct correlation between income and years in the workforce. One cannot make such a broad-based comparison with any statistical significance.

And most notably, to our knowledge there is no statutory or regulatory authority granted to the Department to develop a litmus test for educational return on investment related any standardized wage information.

And finally, we take umbrage to the Department's acceptance and regurgitation of the accusations promoted by Senator Tom Harkin in his 2012 Report and his perception of student "churn" within the for-profit community.

AACS follows strict State and accrediting agency guidelines regarding student completion and withdrawals. Our community would gladly enter into discussions regarding our outcomes, particularly completion rates in comparison to the rates of community colleges, public, and private institutions alike when it comes to our success within our disciplines. However, no such discussion will occur, because in true comparison between the institutions and programs, it is our brethren, not our community, that will be found to be wanting.

Educational costs and efficacy cannot be addressed without evaluating completion rates. By example, all else being equal (and assuming further that tuition equals cost of education, which it does not), if a community college program has a tuition of $5000 with a 20% completion rate and a proprietary school program has a $10,000 tuition with a 50% completion rate, the overall cost of educating a community college graduate will be $25,000 vs. $20,000 for the proprietary school graduate. Of course this fails to consider the additional opportunity costs to the ungraduated students. In short, the cost of education can only be legitimately based upon the cost per graduate, not cost per student.

We would gladly also enter into discussions regarding licensure and placement rates, tuition, debt levels, student matriculation, future earnings potential, marketing and recruitment practices, and the list goes on and on, but the fact is none of these have anything to do with the proposed regulation and are nothing more than propaganda the Administration and the Department are attempting to use in promotion of poor policy. For shame.

Section-by-Section Response with Accompanying Regulatory Language
Conforming Amendments to Proposed Gainful Employment Regulations
New Subpart Q - §§668.401 - 668.415
Prepared by the American Association of Cosmetology Schools (AACS)

PART 600 Institutional Eligibility

Section 600.2 Definitions.

AACS supports the Department's proposed technical revisions to § 600.2 Definitions that update the U.S. Department of Labor's O*NET website url listing, information critical to the tracking of the program codes later in the regulation.

Section 600.10 New Programs

AACS commends the Department of Education for developing a more streamlined and effective means of both:

- verifying the eligibility and compliance of existing programs subject to the gainful employment regulations –
  discussed in greater detail in our response under the proposed revisions to §600.21; and
- establishing a new, more effective and efficient method for the approval of new programs under the proposed regulations – discussed in greater detail in our response to §600.20.

While in support of the proposals contained within this section, AACS seeks clarification from the Department regarding the proposed language under §600.10(c). It appears as though the proposed regulatory language under 600.1(c)(3) is a holdover from the prior Final regulations.

Given the court's ruling, which vacated much of the prior regulation – including in particular the new program approval requirements – is this language, and similar language contained in Section 600.1 still valid and enforceable? If it is no longer valid and enforceable, the Department's NPRM would be/is inconsistent with current regulations.

Section 600.20 New Program Application Requirements

As previously noted, AACS appreciates and supports the Department's revised approach to new program approval for institutions' and their programs which are subject to the regulation.

AACS believes that limiting the need for approval only to those programs at institutions upon which the Secretary notifies the school that the certification process, as defined under new §668.414 – Certification Requirements for GE Programs, necessitates is far better than the complex and lengthy process previously proposed by the Department.

However, AACS once again seeks clarification and assurances from the Department regarding what regulatory language will be used as the basis for the other portions of §600.20.

Specifically, whether or not the Department intends to keep the previously developed and established gainful employment language for new program regulations outlined under §600.20(d).

AACS maintains that the provisions contained within subsection (d) as promulgated under the October 29, 2010 regulations were vacated by the courts, and as such the language under (d) must revert back to the regulatory language prior to first gainful employment regulations. If it is the Department's intent to maintain the revised provisions under §600.20(d), AACS would be forced to oppose these revisions and seek the modifications as outlined above.

AACS' Proposed Regulatory Revisions:
Revise §600.20(d) to read as follows:
(d) Application format.
To satisfy the requirements of paragraphs (a), (b), and (c) of this section, an institution must apply in a format prescribed by the Secretary for that purpose and provide all the information and documentation requested by the Secretary to make a determination of its eligibility and certification.

Section 600.21 New Program Reporting Requirements

AACS supports this addition to the list of application updates required of institutions, but only if – as noted in the prior section – it is in lieu, and not in addition to, the prior requirements under §600.20(d).

PART 668 Student Assistance General Provisions

Section 668.8 Eligible Program

AACS supports the Department's proposed technical revisions to §668.8 – Eligible Program.

Section 668.14 Program Participation Agreement (PPA)

While AACS supports the proposed revisions to §668.14 – Program Participation Agreement (PPA), we believe that there is a technical correction required.

AACS' Proposed Regulatory Revisions:
It is our belief that the Department's reference to revisions to "§668.14(a)(26)" are inaccurate and that the actual reference should be *"§668.14(b)(26)."*

Section-by-Section Response with Accompanying Regulatory Language
Proposed Gainful Employment Regulations
New Subpart Q - §§668.401 - 668.415
Prepared by the American Association of Cosmetology Schools (AACS)

§668.401 Scope and Purpose.

While AACS maintains that the new Subpart Q – Gainful Employment regulations are neither the best, nor the most appropriate methodology to attempt to determine the quality and effectiveness of any program, Courts have made it clear that the Department has the authority to regulate in this area and AACS therefore recognizes, but does not support, the Department's decision to do so.

As noted in detail in our General Response that precedes this comprehensive response, AACS strongly disagrees with many of the assertions made by the Department as justification for the need to regulate in this area and even more stringently disapproves of the Department's efforts to promulgate regulations – any regulations – based upon less than complete and comprehensive data.

We therefor begin our section-by-section response once again urging the Department to table any further consideration of this regulation until, at a minimum, the Department provides every institution and program subject to the rule with:

- complete and comprehensive data sets containing all of the information necessary for an institution to determine every single program's current eligibility status under both the D/E (including D/E at both the two-year cohort and, as necessary, four-year cohort period) and pCDR metrics; and
- sufficient additional time to analyze and make additional recommendations to the proposed regulations, based upon complete picture of its effect on an institution's students and programs, BEFORE a final regulations is published.

Furthermore, AACS strongly asserts that if this method of assessment is worthy of adoption by the Department for programs under the Higher Education Act of 1965, as amended, that are established to prepare students for gainful employment in a recognized occupation, the Department should consider applying similar, if not identical, criterion and assessment of educational quality and integrity to all higher education programs which provide students access to federal student financial assistance.

Given the Department's and the Administration's efforts to collect data similar to information used to determine eligibility under these regulations (e.g. College Scorecard and Student Financial Aid Shopping Sheet), AACS requests that, at a minimum, the Department conduct a study, detailing the eligibility of all programs offered by every institution of higher education based upon this accountability and transparency framework.

§668.402 Definitions.
With the exception of the concerns noted below, AACS generally supports the Department's proposed definitions under §668.402.

Definitions supported as proposed include:

- Annual Earnings Rate
- Classification of Instructional Program (CIP) Code
- Debt-to-Earnings Rate
- Discretionary Income Rate
- Gainful Employment Program
- GE Measures
- Length of Program
- Metropolitan Statistical Area (MSA)
- Poverty Guideline
- Program Cohort Default Rate (pCDR)
- Title IV Loan

While supportive of the majority of the Department's definitions, AACS hopes to persuade the Department to make revisions to several important definitions including:

- Cohort Period, Four-Year Cohort Period and Two-Year Cohort Period; and
- Student and Prospective Student.

Cohort Period

AACS hopes to persuade the Department that the revisions made between the December Draft and the NPRM related to the applicable cohort period used to determine D/E rates are unnecessary and overly prescriptive.

The Department has never produced data (under either the 2011 Regulations and corresponding 2010 Informational Rates or the recently published NPRM and corresponding 2012 Informational Rates) showing the effect of such a proposal on programs subject to the rule.

Moreover, the Department has provided little if any justification and rationale in defense of the longer time horizon to assess programs with minimal cohorts (n size $\leq$ 30).

Without the data and a clear indication that it would support the Department's presumption of need, AACS respectfully suggests that the Department is over-reaching with this proposal, and should weigh the benefits to both the Department and institutions in making this change.

We hope that upon further review the Department will agree with AACS that this degree of assessment, is unnecessary and will provide limited if any value compared to the administrative burden for all involved.

(Note: AACS takes no position regarding the use of the broader cohort periods for a program whose students are required to complete a medical or dental internship or residency, but understands the rationale and justification for the longer time period under these circumstances.

Circumstances which we suggest are absent when considering programs outside of the medical and dental professions.)

Consistent with our broader request, IF the Department chooses to maintain these definitions and the broader four-year cohort period, we would again urge that the promulgation of any final regulations be withheld until a comprehensive data set, detailing all affected institutions and programs is provided, and institutions have time to review and comment on the impact.

Moreover, AACS seeks revisions to the proposed definitions of "Student" and "Prospective Student."

Student

As noted by the Department is summation of the purpose and rationale for §668.401 contained in the statement of purpose and preamble, AACS is one of the affected parties who participated in the negotiations who continue to call upon the Department to revise the definition of "Student" to include all students who are included in NSLDS because they applied for title IV, HEA program funds by filing a FAFSA and/or have previously received title IV, HEA program funds for attendance in another eligible program.

We believe that the inclusion of these students would more accurately reflect the title IV population of an institution, providing even more relevant information for both determinations of eligibility and consumer information, and should therefore form the basis for assessment under the regulations.

Prospective Student

AACS opposes the Department's more expansive definition for a prospective student which, as the Department notes, is inconsistent with the definition under current §668.41(a).

> *Prospective student* means an individual who has contacted an eligible institution requesting information concerning admission to that institution.

AACS disagrees with the Department and other non-federal negotiators recommendations that, for the purposes of the GE regulations, the standard definition used throughout the regulations is inadequate.

We view the expanded definition as unnecessary, and suggest that the Department's goal should be to maintain consistency amongst and between the regulations, and should therefore return to the use of the previous, and current definition as prescribed under §668.41.

We note that the more widely held definition has been embraced by the Department and non-federal negotiators for inclusion in separate negotiations currently being held on State authorization for distance education providers.

If it is good enough for the new Program Integrity and Improvement regulation and the underlying regulations, we believe that it is good enough for use in these regulations as well.

§668.403 Gainful Employment Framework

AACS opposes the proposed gainful employment accountability framework established under §668.403 and seeks a series of revisions, which we believe will both strengthen the integrity of the regulation and the accountability framework the Department is proposing.

As noted in our response to the Conforming Provisions which precede the new proposed Subpart Q, AACS supports the new certification requirements under §660.403(a)(1) and corresponding provisions under §§600.20; 600.21, and 668.414.

However, we oppose the language under §660.403(a)(2) and §660.403(c) which:

- mandates institutional compliance with two separate and independent metrics (D/E and pCDR) – metrics based upon different cohorts of students and assessment periods, resulting in a complex, confusing, and impractical asynchronous method of assessment.
- proposes an unnecessary tiered approach to determining eligibility and compliance under the D/E;
- bases the passing level of the D/E on misinterpreted and inaccurate characterizations of the benchmark used as the threshold for compliance; and
- fails to provide adequate time for institutions to implement revisions which may be necessary for a program to achieve compliance.

Independent Metrics

AACS opposes the development and implementation of two separate and independent metrics – metrics based upon different cohorts of students and assessment periods, resulting in a complex, confusing, and impractical asynchronous method of assessment.

Under the prior rulemaking the three metrics, collectively referred to as the "debt measures" were each considered as alternative ways to comply with the regulation.

In the development of the prior rule the Department acknowledged that sole reliance on two debt-to-earnings (DTE) ratios might result in closing quality programs.

The Department noted that the loan repayment rate was included to work together as an alternative metric to the DTE ratios to ensure that programs weren't closed unless students were "in fact" struggling to repay their loans.

The program level cohort default rates discussed in the negotiation sessions and proposed in the NPRM serves the same role as the prior loan repayment rate.

Hence, although a different metric is now being employed, we believe that the Department's same logic is applicable.

And, therefore, AACS strongly urges the Department to maintain the use of a three part test, where passage of any one of the three metrics, either one of the D/E rates **or** pCDR, results in program compliance.

To do otherwise would be inconsistent with the Department's own noted concerns of unjustly eliminating programs which may otherwise be doing and effective job of providing students with a quality education.

Tiered Eligibility & Compliance Criteria

AACS opposes the Department's reconsideration of the use of a tiered approach to determinations of eligibility under the D/E rates.

While we have previously acknowledged the Court's ruling that the Department has the authority to regulate in this area, we see no statutory authority or rationale for the Department to implement such a complex accountability framework with three levels of assessment and two outcomes which over time result in ineligibility.

For the reasons discussed in greater detail in the subsequent section, AACS urges the Department to return to a single eligibility threshold based upon the prior rules' 12% of annual D/E and/or 30% of discretionary D/E – removing the unjustified 8% annual D/E and 20% discretionary earnings threshold and the zone.

Determining the Appropriate Compliance Threshold – Not Thresholds

AACS disagrees with the Department's and other non-federal negotiators assertions – both during the negotiations and in the Department's NPRM – that previous studies and reports support the use of an 8% annual D/E as the benchmark for a "passing" program, the corresponding need to develop a "failing" benchmark, and any justification for the implementation of the "zone".

As point of fact, the 2006 College Board Publication, commissioned by the College Board and the Project on Student Debt, entitled "How Much Debt Is Too Much? Defining Benchmarks for Manageable Student Debt", authored by Sandy Baum and Saul Schwartz, which is widely cited as the rationale for the use of the 8% threshold (referred to in the report as the 8 Percent Rule) as the passing score, specifically states,

> In sum, we believe that using the difference between the front-end and back-end ratios historically used for mortgage qualification as a benchmark for manageable student loan borrowing has no particular merit or justification. This is not to say that 8 percent is an unreasonable number. Some of the problems listed above suggest that higher limits might be appropriate, while other suggest the opposite. It is simply to say that any benchmark needs stronger justification than has thus far been forthcoming.

The publication goes on to lay out a series of "shortcomings" of the 8 percent rule, derived from the mortgage industry, as a justification for attempting to determine manageable student debt – noting in their conclusion:

> Our review of the various possible approaches to setting benchmarks for reasonable student debt levels makes it clear why the vague concept that monthly

payments are manageable if they do not exceed 8 percent of income has prevailed for so long, despite its weak empirical basis.

Clearly, those seeking to use this study as the basis for their arguments have misinterpreted – at least a portion of the study's findings and are using inaccurate information upon which to base their insistence that this combined benchmark be used as the determinate of a passing program.

At best, this is an apples-to-oranges comparison, as it compares creditworthy mortgage borrowers, with work histories and minimum credit standards, to typically uncreditworthy students, without work histories and unestablished/poor credit.

Further, as the study suggests, before such a benchmark should be considered there "needs to be strong justification than has thus far been forthcoming." To date, neither the Department nor any of the non-federal negotiators have provided such justification.

In fact several studies which both precede and follow the 2006 publication offer varying ranges and rationales:

- The Government Accountability Office (2003) – suggested a standard of 10% of first-year income;
- National Center for Education (2014) – found that for bachelor's graduates of four-year institutions, 26% of public school graduates, 39% of private nonprofit, and 35% of proprietary graduates exceeded a much easier 12% debt-to-earnings threshold;
- Financial Aid Expert Mark Kantrowitz (2012) – proposed 13.8% of annual earnings as the most equitable benchmark under the current economic environment.

In consideration of the prior rule the Department wisely chose to dismiss the use of a tiered approach and made the determination to set the single eligibility and compliance threshold at 12% of annual D/E and/or 30% of discretionary D/E. And we note that this threshold was reviewed and accepted by the Courts.

Regardless of the reason and rationale for doing so, AACS supports the Department's prior decision, and its wisdom in doing so, and hopes to persuade the Department to make the same revisions in the publication of this regulatory package.

Choosing not to do so suggests that the prior D/E metrics of 12% annual and 30% discretionary, which the Department supported and the Court upheld, could be viewed as arbitrary. Calling into question why the Department is now second-guessing its own decision-making by proposing a much more complex approach, while at the same time reducing the eligibility assessment period suggest either a lack of justification for the prior metrics and/or efforts to intentionally be more punitive in constructing the latest proposal.

Reduced Compliance Deadline

AACS opposes the Department's decision to reduce the assessment period used to determine a program's eligibility under the D/E metrics from three out of any four consecutive fiscal years to two out of any three year consecutive award years.

Regardless of whether or not the Department chooses to implement the changes requested above, and even with the transitional period provided for under §660.404 – Calculating D/E Rates, it is going to take institutions time to implement revisions and have them take root to the degree required to achieve compliance with the D/E metrics.

AACS respectfully requests that the Department reconsider this provision and the constraints it will place upon institutions who will be working diligently and vigilantly to implement revisions necessary to comply and grant them adequate time to do so.

AACS' Proposed Regulatory Revisions:
1. Revise §660.403(a)(2) to read as follows:

"(2) Is not an ineligible program under the provisions for the D/E rates measure described in paragraph (b)(1) *and* the provisions for the pCDR measure described in paragraph (b)(2)."

2. Revise §660.403(c) to read as follows:

"(c) Outcomes of GE measures. (1) D/E rates.
(i) A GE program fails to comply with the regulations if –
(A) Its discretionary income rate is greater than 30 percent or the income for the denominator (discretionary earnings) of the rate is negative or zero; and
(B) Its annual earnings rate is greater than 12 percent or the denominator (annual earnings) of the rate is zero.
(ii) "For the purpose of the D/E rates measure, a GE program becomes ineligible if the program fails the D/E rates measure in three out of any four consecutive award years for which the program's D/E rates are calculated."

§668.404 Calculating D/E Rates.
(a) General.
As noted later in AACS' response to subsections §668.404(e) Exclusions and §668.404(f) D/E Rates Not Calculated, we thank the Department for taking into consideration circumstances in which it would be inappropriate to include specific students in the calculations used to determine the D/E metrics.

As far as the criteria used to determine the D/E rates and the methodology behind them, which is consistent with the 2011 Regulations, AACS reserves comment, choosing once again to focus on the lack of complete and comprehensive data which:

- should be capable of being derived from these proposed equations and computations; and
- must be provided to all institutions before any final regulations are developed and considered.

(b) Annual loan payment.
Consistent with our earlier comments under §668.402 Definitions, AACS hopes that the Department will consider limiting the applicable cohort period to two-years and have proposed revisions to the NPRM restoring language contained in the December Draft to that effect.

We also request that the Department consider modifying the assessment of annual loan payments based upon the lower of the mean or median loan debt instead of applying only median loan debt to this determination.

AACS does wish to acknowledge and thank the Department for maintaining the language agreed upon by the 2013 Federal Negotiating Committee related to capping loan debt incurred by each student at the total amount of tuition and fees, but remains concerned with the additional inclusion of books, equipment, and supplies proposed in the NPRM.

As the Department knows, most cosmetology programs choose to include the costs of books, kits and supplies into the cost of their programs. We do this, among other reasons, to limit students out of pocket expenses later in the program.

Unfortunately, as we discussed during the negotiations, the inclusion of the kits considerably drives up the amount that might be borrowed, increasing the amount which must be offset by students' earning potential early in their professional careers.

While we recognize that this is an academic/institutional cost, we would like to request that the Department consider making accommodation for the exclusion of these costs, if the institution can show that there is actually a reduction in price of the equipment through direct purchasing and inclusion of the equipment and supplies from the institution.

AACS also wishes to thank the Department for making a significant revision in the NPRM, which while discussed frequently by many of the 2013 Negotiating Committee members, was not contained in the prior drafts circulated by the Department. We are speaking of course of the Department's decision to reinstate the 10, 15, and 20-year amortization rates for median loan debt and annual interest rate.

While not as significant an issue for the for-profit cosmetology schools given our program lengths, we supported the efforts of our colleagues within both the broader for-profit community and the higher education community who repeatedly called upon the Department to make this change to provide equity for longer-term programs.

AACS' Proposed Regulatory Revisions:
Revise §668.404(b) to read as follows:

(b) Annual loan payment.
The Secretary calculates the annual loan payment for a GE program by—
(1) Determining the *lower of the mean or* median loan debt of the students who completed the program *during the two- period*, based on the lesser of—
(i) The loan debt incurred by each student as determined under paragraph (d); and

(ii) The total amount of tuition and fees the institution assessed each student for enrollment in the program and the total amount for books, equipment, and supplies, as reported in §668.411(a)(1)(iv) and (v).

(c) Annual earnings.

AACS is curious as to why the Department felt the need to add "or another Federal agency" to the proposed regulation – language which was not included in the proposals deliberated by the Negotiating Committee, but we do recognize was included in the prior 2011 Regulations.

AACS understood the rationale for including the caveat in the previous regulations as the Department was, at the time, unsure whether or not it would be capable of obtaining this information from the Social Security Administration (SSA).

Now, however, the Department has an established relationship with the SSA and a system in place to continue acquiring the information from SSA.

Given this relationship, can the Department please explain why it has re-introduced this language into the NPRM?

Does the Department anticipate seeking the calculation of this important aggregated information from a source other than the Social Security Administration? If so, who and why?

Unless the Department has a specific reason for including this revision, AACS would suggest that it be removed as we believe that it adds unnecessary confusion to the regulation.

If the Department insists on keeping the language, we note the need to carry this language through to all of the relevant portions of §668.405.

In an effort to highlight just how confusing the insertion of the this proposal becomes when viewed as a part of the actual process outlined in the regulations, AACS has attempted to insert the appropriate language where applicable under §668.405 below.

AACS hopes that once the Department reviews all of the areas where the change would be required, you will agree with us that the addition is unnecessary and omit it in the final regulation.

Maintaining our prior request that all references to "applicable cohort periods" be replaced with the language contained in the December Draft, we request that the Department go back to the previously proposed language for this subsection.

AACS' Proposed Regulatory Revisions:

Revise §668.404(c) to read as follows:

(c) Annual earnings.

(1) The Secretary obtains from the Social Security Administration (SSA), under §668.405, the most currently available mean and median annual earnings of the students who completed the GE program during the two-year period and who are not excluded under paragraph (e); and
(2) The Secretary uses the higher of the mean or median annual earnings to calculate the D/E rates.

(d) Loan debt.
AACS strongly supports and applauds the Department's decision to limit the attribution of borrowing only to the loan debt incurred by the student for enrollment in the specific GE program for which the funds are used.

We believe that it would have been unjust to hold institutions accountable for the debt accrued by the student at a prior institution/program.

Furthermore, AACS also supports the Department's proposed revision to this section which tracks debt annually, based upon the highest credentialed program completed.

AACS seeks clarification, and suggests the inclusion of language in the Preamble accompanying the final regulations, defining the conditions and rationale under which the Secretary would include the loan debt incurred from another institution.

We believe that the inclusion of the annual award year assessment of the highest credential completed by the student should provide clear information on the success, or lack thereof, of students at each institution, and therefore wonder if this requirement is necessary given the other revisions contained in this section.

(e) Exclusions.
AACS supports the Department's revisions to the specific circumstances upon which a student is removed from the D/E calculation.

We commend the Department for revising the timeframe for military service, student enrollment in another program, clarity regarding enrollment in both undergraduate and post-graduate (et.al.) programs.

(f) D/E rates not calculated.
AACS was extremely pleased with the Department's decision to base the cohort size on programs in which 30 or more students completed, and urge the Department not to reconsider returning to the smaller n-size of 10 students.

We thank the Department for including this larger sample size, which we believe will not only protect student privacy rights, but will also provide consistency within the regulations of a valid sample size.

As previously requested, AACS would like to take this opportunity to once again request that the Department repeal the four-year cohort period, and replace the proposed language under this subsection with the regulations as proposed in the December Draft.

AACS' Proposed Revisions:
Revise §668.404(f) to read as follows:

(f) D/E rates not calculated.
The Secretary does not calculate D/E rates for a GE program if—
(1) After applying the exclusions in paragraph (e), fewer than 30 students completed the program during the two-year cohort period; or
(2) SSA does not provide the mean and median earnings for the program as provided under paragraph (c).

(g) Transition period.
AACS supports the revisions made to the proposed regulation from the draft deliberated by the 2013 Negotiating Committee.

However, to remain consistent with our primary concerns and proposals, we once again call upon the Department to eliminate the use of the "zone" within the proposed regulations.

Furthermore, in response to the question raised by the Department, AACS would support the Department's reinstitution of the five percent cap on program ineligibility in the first year programs could become ineligible.

As was the case under the prior rule, we believe that this will provide yet another opportunity to enable schools and their programs to implement the strategies necessary to comply before risking potential loss of eligibility.

AACS's Proposed Regulatory Revisions:
1. Revise §668.404(g) to read as follows:

"(g) Transition period.
(1) If a GE program would be failing ~~or in the zone~~ based on its draft D/E rates calculated in accordance with paragraphs (a)-(f) for any of the first four award years for which the Secretary calculates D/E rates, the Secretary calculates transitional draft D/E rates for the program by using—"

2. Adding a new §668.404(h) to read as follows:

(h) Transition year. For programs that become ineligible under §668.409 based on final debt measures during the transitional period noted in subsection (g), the Secretary caps the number of those ineligible programs by—
(1) Sorting all programs by category of institution (public, private nonprofit, and proprietary) and then by loan repayment rate, from the lowest rate to the highest rate; and
(2) For each category of institution, beginning with the ineligible program with the lowest loan repayment rate, identifying the ineligible programs that account for a combined number of students who completed the programs during FY 2014 that do not exceed 5 percent of the total number of students who completed programs in that category.

For example, the Secretary does not designate as ineligible a program, or two or more programs that have the same loan repayment rate, if the total number of students who completed that program or programs would exceed the 5 percent cap for an institutional category.

§668.405 Issuing and Challenging D/E Rates.

As previously noted under §668.402 Definitions, AACS hopes that the Department will consider limiting the cohort period to two-years and have proposed revisions to the NPRM restoring language contained in the December Draft.

In addition, as previously noted under §668.404(c), AACS questions the Department's addition of the term "or another Federal agency" and its rationale.

AACS believes that both are unnecessary, but with respect to the latter, if the Department chooses to maintain it, we believe that the regulations should remain consistent throughout, which would necessitate its inclusion in a number of places under proposed §668.405.

AACS Proposed Regulatory Revisions:

1. Revise §668.405(a) to read as follows:

(a) Overview.

For each award year, the Secretary determines the D/E rates for a GE program at an institution by—

(1) Creating a list of the students who completed the program during the applicable *two-year period* and providing the list to the institution, as provided in paragraph (b);
(2) Allowing the institution to correct the information about the students on the list, as provided in paragraph (c);
(3) Obtaining from SSA or another Federal agency the mean and median annual earnings of the students on the list, as provided in paragraph (d);
(4) …

2. Revise §668.405(b) to read as follows:

(b) Creating the list of students.

(1) The Secretary selects the students to be in included on the list by—
(i) Identifying the students who completed the program during the applicable *two-year period* from the data provided by the institution under §668.411; and
(ii) …

3. Revise §668.405(d) to read as follows:

(d) Obtaining earnings data.

The Secretary submits the final list to SSA or another Federal agency. For purposes of this section, SSA *or another Federal agency* returns to the Secretary—
(1) The mean and median annual earnings of the students on the list whom SSA *or another Federal agency* has matched to SSA *or another Federal agency* earnings data, in aggregate and not in individual form; and

(2) The number, but not the identities, of students on the list that SSA *or another Federal agency* could not match.

4. Revise §668.405(e) to read as follows:
(e) Calculating draft D/E rates.
(1) The Secretary uses the higher of the mean or median annual earnings provided by SSA *or another Federal agency* to calculate draft D/E rates for a GE program, as provided in §668.404.
(2) If SSA *or another Federal agency* reports that it was unable to match one or more of the students on the final list, the Secretary does not include in the calculation of the median loan debt the same number of students with the highest loan debts as the number of students whose earnings SSA *or another Federal agency* did not match. For example, if SSA *or another Federal agency* is unable to match three students out of 100 students, the Secretary orders by amount the debts of the 100 listed students and excludes from the D/E rates calculation the three largest loan debts.
(3)(i) The Secretary notifies the institution of the draft D/E rates for the program and provides the mean and median annual earnings obtained from SSA *or another Federal agency* and the individual student loan information used to calculate the rates, including the loan debt that was used in the calculation for each student.
(ii) The draft D/E rates and the data described in paragraphs (b) through (e) are not considered public information.

5. Revise §668.405(f) to read as follows:
(f) Institutional challenges to draft D/E rates.
…
(3) In a challenge under this section, the Secretary does not consider—
(i) Any objection to the mean or median annual earnings that SSA *or another Federal agency* provided to the Secretary;

§668.406 D/E Rates Alternate Earnings Appeals and Showings of Mitigating Circumstances.
AACS commends the Department for taking into consideration the concerns expressed by many 2013 Federal Negotiating Committee members and making an effort to expand the alternate earning appeals available to institutions beyond the institutional survey.

We believe that the addition of the State-sponsored data system appeal will provide specific program disciplines and the institutions who offer them with another viable method to appeal and that this proposal may well provide an alternative appeal process for our membership.

However, AACS remains frustrated and disappointed with the lack of inclusion of any opportunity for institutions to use BLS data as yet another alternate earnings appeal.

As the Department knows, certain characteristics associated with the service-related industries provide the opportunity for gainfully employed individuals to underreport their earnings – and in some instances not report their earnings at all.

AACS has brought this concern to the Department's attention throughout the entire negotiations of both the prior and the pending regulations. And in the past, the Department has been responsive to these concerns, providing language in the 2011 regulation which allowed for the use of BLS data as an alternative earnings appeal during the transitional period.

AACS is once again seeking the Department's consideration of this type of annual earnings appeal, not as a bridge during the transitional period, but as a third, separate and distinct alternative earnings appeal.

Given the revisions the Department has proposed under §668.406(b), which provide a significant benefit to those institutions with a different unique set of characteristics, we feel the Department should be willing to revisit AACS' request.

While we support the efforts of the Department to consider new and alternative earnings appeals rights, and hope that the Department will consider adding back – at least during the transition – the provision contained in the 2011 Regulations that enabled institutions to use BLS data as the basis for an appeal, AACS cannot support the Department's proposed addition of the Showings of Mitigating Circumstances under §668.406(b).

Aside from the obvious discriminatory purpose of accommodating certain subsets of institutions with fewer than fifty percent of students borrowing, this process can also result in unfair and unequal treatment of similar institutions in different states. For example, in some states cosmetology programs are eligible for State Tuition Assistance grants (administered under several names), while in other states these programs are not eligible.

Although schools may charge the same tuition and graduates may earn the same income, students that qualify for those assistance grants will be eligible for lower loan amounts and their program will pass the thresholds, while students in the other state where grants are not available will be eligible for higher loan amounts and their program will fail.

The problem is further complicated because state grant eligibility is often determined by institutional structure (profit vs. non-profit) and whether the school is degree granting regardless of whether students are enrolled in degree programs.

It is also unjust, and unacceptable, that in this situation the Department has seen fit to allow the inclusion of non-title IV recipients in the school's calculation of borrowing rates which contradicts their stated reasons for refusing to accept our suggestion to define student as a title IV applicant.

It is disingenuous to say that this process is fair because it is available to all institutions when it is as clear that it is meant to allow certain types of institutions to fly under the radar, while misleading students about performance of programs.

AACS' Proposed Regulatory Revisions:

1. Revise §668.406(a) to read as follows:

(a) Alternate earnings appeals.
(1) General.
If a GE program is failing ~~or in the zone~~ under the D/E rates measure, an institution may file an alternate earnings appeal to request recalculation of the program's most recent final D/E rates issued by the Secretary.

(2) Basis for appeals.
(i) The institution may use alternate earnings from an institutional survey conducted under paragraph (a)(3), *BLS data under paragraph (a)(4),* or from a State-sponsored data system under paragraph ~~(a)(4)~~ *(a)(5),* to recalculate the program's final D/E rates and file an appeal if~~—~~
~~(A) For~~ for a program that was failing the D/E rates measure, the program's recalculated rates are passing ~~or in the zone; or~~
~~(B) For a program that was in the zone for the purpose of the D/E rates measure, the program's recalculated rates are passing~~.
(ii) In recalculating the final D/E rates, the institution must—
(A) For the numerator, use the annual loan payment used in the calculation of the final D/E rates; and
(B) For the denominator, use the higher of the mean or median alternate earnings. The alternate earnings must be from the same calendar year for which the Secretary obtained earnings data from SSA to calculate
the final D/E rates under §668.404.
(3) Survey Requirements for appeals.
…
(4) BLS data requirements for appeals.
An institution must—
(i) Identify and provide documentation of the occupation by SOC code, or combination of SOC codes, in which more than 50 percent of the students applicable cohort period were placed or found employment. The institution may use placement records it maintains to satisfy accrediting agency or State requirements if those records indicate the occupation in which the student was placed. Otherwise, the institution must submit employment records or other documentation showing the SOC code or codes in which the students typically found employment;
(ii) Uses the most current BLS earnings data for the identified SOC code to calculate the debt-to-earnings ratio. If more than one SOC code is identified under paragraph (a)(4)(i) of this section, the institution must calculate the weighted average earnings of those SOC codes based on BLS employment data or institutional placement data. In either case, the institution must use BLS earnings at no higher than the 25th percentile; and
(iii) Submit, upon request, all the placement, employment, and other records maintained by the institution for the program under paragraph (a)(4)(i) of this section that the institution examined to determine whether those records identified the SOC codes for the students who were placed or found employment.
~~(4)~~ (5) State-sponsored data system requirements for appeals.
…
~~(5)~~ (6) Appeals Procedures.
…
~~(6)~~ (7) Appeals Determinations.

§668.407 Calculating pCDR.
AACS again begins with accolades for the Department for making the determination during the 2013 Negotiations to remove from the NPRM prior proposals seeking to require institutions to track and be judged based upon their loan amortization rates.

In this instance the Department noted that, at least in part, their rationale for removing the provisions was due to a lack of complete and comprehensive data. We applaud the Department for making the wise and prudent decision to withdrawal the proposal from consideration for this reason, and again call upon the Department to do so for the entire regulation until such time as complete and comprehensive data is provided for both the D/E and pCDR metrics.

With regard to the later, AACS, and noted in our General Response, was surprised at the number of programs, including a significant portion within the cosmetology disciplines, upon which the Department could not produce pCDR data.

We call upon the Department to provide answers as to how institutions, subject to institutional CDRs, could have programs upon which the Department would be unable to generate programmatic CDRs so that we may better understand why the data is so sporadic and fails to give institutions an indication of their programs' compliance.

While we assume that some of the holes in the data are the result of new programs, programs with minimal cohort sizes, or perhaps even programs who either voluntarily withdrew from the program or simply do not accept title IV loans, we are hopeful that the Department can help explain the gaps in the data.

As the Department looks into these questions, AACS would also like the Department to consider the unique characteristics of our community and the potential impact that the regulations in this area may have upon the cosmetology community.

Unlike most other programs which offer multiple education disciplines, the cosmetology school community is almost exclusively focused upon a narrow set of programs. Given this unique characteristic, AACS is concerned, but cannot tell based upon the limited data available, whether or not pCDRs place an additional, undue hardship on our community.

AACS believes that the Departments rationale for requiring programs to pass both D/E and pCDR is based on the false assertion that CDRs are not a valid indicator because school's have historically found ways to manipulate rates.

While there may have been some ability to manage rates in the past, we are now utilizing three-year CDRs and the GE rules intend to do the same, with a further drill down to the program level.

Our concern is that programmatic rates also eliminate an institution's ability to offset bad rates in one program with good rates in another. Because of the limited duration of deferments and forbearances, the utilization of programmatic rates, and the limited ability to appropriately

counsel borrower of their repayment options under the three year tracking mechanism which is now in place, the suggestion that pCDRs could not be used as an independent metric is invalid.

The proposed regulations suggest that graduates with D/E rates above the arbitrary threshold of 8% are unable to pay their loan obligations for debt incurred during the program. However, calculations of pCDRs under 30% indicate that a significant number of graduates are in fact paying their obligations.

This emphasizes another inherent flaw and the arbitrary nature in the suggested thresholds.

§668.408 Issuing and Challenging pCDR.

AACS again begins our response with support and gratitude for the Department's decision to provide institutions with similar, if not identical appeals rights and challenges under the new pCDRs and Subpart R as those provided for institutional CDRs under Subpart N.

AACS' biggest concern in this area has little to do with the actual regulation as proposed, and more to do with the ability of the Department to administer the increased volume of work which will follow as a result of the proposed regulations.

It is our understanding that the Department has been experiencing some delays in the processing and adjudication of institutional CDR challenges and appeals. Given these bottlenecks, AACS is concerned that the Department may or may not have the necessary resources to fulfill its expanded role and responsibilities under the proposed regulation.

As a point of clarification, we seek assurances that, in the event that the Department is delayed in its review of timely submissions by institutions, that they will not be penalized and remain eligible while the Department processes the review. Moreover, we seek assurances that any potential backlog or delays on the part of the Department will not result in more restrictive reviews and denials.

We offer these comments and questions not to be antagonistic, but out or genuine concern for the administrative burden the regulations place on the Department in this particular circumstance.

§668.409 Final Determination of GE Measures.

AACS begins our response to this section with enthusiastic support for the Department's decision to remove proposed limitations contained under §668.409(a)(1)(iv).

We ardently support the elimination of the proposed regulatory language in this section and the repeal of the more expansive language that would have followed under new §668.410.

While enthusiastically supporting these revisions and urging the Department not to reverse course on the decision to exclude them in the final regulations, AACS does however maintain our concerns and opposition to key provisions within the regulation which we hope the Department will revise prior to promulgation of final regulations.

These include, but are not limited to the Department's:

- three-tiered approach to eligibility determinations under the D/E metric;
- use of two separate, independent metrics and two different timetables for determining of institution's programmatic compliance; and
- the complexities and confusion which will result from the asynchronous methodology of the proposed regulations which result in two separate timetables – using two separate and different tracking periods – to determine compliance under the regulations.

AACS disagrees with the Department's assertion in the Preamble related to §668.410 that there is no functional need to synchronize the calculation of D/E rates and the pCDR.

The Department sites as its rationale for this position that "the information used for each measure is distinct and tied to different cohorts of students and different time periods."

From our vantage point, that is precisely the problem and the reason against using this methodology. Continuing to do so lends itself to levels of complexity and confusion which will make it hard for all of us to comply with the new regulations, therefore we hope the Department will strongly consider and make additional revisions to the regulations to further simplify the process.

AACS' Proposed Regulatory Revisions:
Revise §668.409(a) to read as follows:
(a) Notice of determination.
For each award year for the D/E rates measure and fiscal year for the pCDR measure for which the Secretary calculates a GE measure for a GE program, the Secretary issues a notice of determination informing the institution of the following:

(1) For the D/E rates—
(i) The final rates for the program as determined under §668.404, §668.405, and, if applicable, §668.406;
(ii) The final determination by the Secretary of whether the program is passing~~, failing, in the zone,~~ or ineligible, as described in §668.403, and the consequences of that determination;
(iii) Whether the program could become ineligible based on its final D/E rates for the next award year for which D/E rates are calculated for the program;
(iv) Whether the institution is required to provide the student warning under §668.410(a); and
(v) If the program's final D/E rates are failing ~~or in the zone~~, instructions on how it may make an alternate earnings appeal or make a showing of mitigating circumstances pursuant to §668.406.

§668.410 Consequences of GE Measures.
AACS begins by once again echoing our enthusiastic support for the Department's decision to remove previously proposed §668.409(d)(3) – Enrollment Limits and (e) – Borrower Relief from inclusion under the new §668.410 proposed in the NPRM.

While pleased to see the removal of these two prior sections from the revised regulatory proposal, AACS was disappointed that the Department also elected to remove §668.409(f) – Loan Reduction Plan, which afforded the institution the opportunity to replace loan debt with institutional grants for all students in a given cohort, thereby reducing the students' debt and the threshold for D/E metrics.

AACS, along with many in representatives from the higher education community, supported this innovative method of institutional compliance during the transition, and believed that the Department itself agreed that it was the most fair and balanced method of protecting the interests of students while an institution attempts to transition into compliance with the new regulations.

Thus, AACS urges the Department to reinstitute this alternative compliance provision.

In order to modify the provision and make it consistent with other revisions to the regulations, AACS suggests that institutions be given the latitude and flexibility to determine the amount of institutional grants. We would argue against a set dollar figure or percentage as unique characteristics within each program (credential level, length, student demographics, et. al.) will result in different grant levels per program.

And finally, while significantly improved upon from the prior December Draft, AACS also has two additional requests under the Student Warnings.

First, we remain concerned that the mandatory statements required under §668.410(a)(1)(i) and (ii) fail to take into consideration legitimate circumstances upon which, due to the length of a program, provide the student with this statement would in fact be inaccurate and misleading.

AACS requests that the Department provide a caveat or some form of flexibility in circumstances where requiring such a warning would in fact be false, misleading, and counter-productive to provide to currently enrolled students.

Our request would be limited only to enrolled students, maintaining the requirements under §668.410(a)(2) that all prospective students must receive the student warning, which is appropriately worded for new students.

Second, we call to the Department's attention the wording surrounding prospective students and the explicit requirement that a prospective student's first contact result in a written warning.

Depending on the circumstances, if the student contacts the institution for information about a program, it will be impossible to instantaneously provide the individual with a written statement.

We agree with the Department and support the requirement that the warnings, if applicable, should be a part of the disclosure template, but again have considerable angst surrounding first contact and the ability of any institution to comply with the requirement under these circumstances.

We therefore suggest that the word "written" be removed from §668.410(a)(2)(i) and consider making this mandatory statement part of the enrollment and registration process instead. Under this process, the student still has a minimum of three days to make a determination, and inclusion of the written statement at this part of the process makes more sense, and does not set the institution up for failure because a limited, initial communication, does not included the required information.

If the Department does not take steps in the development of the final regulations to address this issue, we urge the Department to develop specific testing around these two topics as part of the consumer testing – testing that must include students from our sector of the higher education community.

AACS' Proposed Regulatory Revisions:

1. Revise §668.410(a) to read as follows:

(a) Student warning.

For any year for which the Secretary notifies an institution that a GE program could become ineligible based on a final GE measure for the next award or fiscal year, the institution—

(1) Must provide a written warning directly to each student enrolled in the program no later than 30 days after the date of the Secretary's notice of determination under §668.409. "Directly" means by hand-delivering the warning to the student individually or as part of a group presentation, or sending the warning to the primary email address used by the institution for communicating with the student about the program. The Secretary will conduct consumer testing to determine how to make the student warning as meaningful as possible. Unless otherwise specified by the Secretary in a notice published in the Federal Register, the warning must—

(i) State that: "You may not be able to use federal student grants or loans to pay for this institution's program next year because the program is currently failing standards established by the U.S. Department of Education. The Department set these standards to help ensure that you are able to find gainful employment in a recognized occupation, and are not burdened by loan debt you may not be able to repay. A program that doesn't meet these standards may lose the ability to provide students with access to federal financial aid to pay for the program."

(ii) Describe the options available to the student to continue his or her education at the institution, or at another institution, in the event that the program loses its eligibility for title IV, HEA program funds; and

(iii) Indicate whether or not the institution will—

(A) Allow the student to transfer to another program at the institution;

(B) Continue to provide instruction in the program to allow the student to complete the program; and

(C) Refund the tuition, fees, and other required charges paid to the institution by, or on behalf of, the student for enrollment in the program.

(2) For each prospective student—

(i) At the time the prospective student first contacts, or is contacted by, the institution about the GE program, must provide a ~~written~~ warning directly to the student. The Secretary will conduct consumer testing to determine how to make the student warning as meaningful as possible. Unless otherwise specified by the Secretary in a notice published in the Federal Register, the warning must state: "You may not be able to use federal student grants or loans to pay for this

institution's program in the future because the program is currently failing standards established by the U.S. Department of Education. The Department set these standards to help ensure that students are able to find gainful employment in a recognized occupation and are not burdened by debt they struggle to repay. A program in violation of these standards may lose the ability to provide students with access to federal financial aid to pay for the program."; and
(ii) May not enroll, register, or enter into a financial commitment with the prospective student in the program earlier than—
(A) Three business days after the warning was first provided to the prospective student; or
(B) If more than 30 days have passed from the date the warning is first provided to the prospective student, three business days after the institution provides another warning as required by paragraph (a)(2)(i).
(3) To the extent practicable, must provide alternatives to English-language warnings for those students and prospective students for whom English is not their first language.

2. Revise §668.410(b) to read as follows:
(b) Restrictions.
(1) Ineligible program.
Except as provided in §668.26(d), an institution may not disburse title IV, HEA program funds to students enrolled in an ineligible program.
(2) Period of ineligibility. An institution may not seek to reestablish the eligibility of a failing ~~or zone~~ program that it discontinued voluntarily, reestablish the eligibility of an ineligible program, or establish the eligibility of a program that is substantially similar to the discontinued or ineligible program, until three years following the date on which the program became ineligible or the institution discontinued the failing or zone program.

3. Add a new §668.410(c) to read as follows:
(c) Loan reduction plan. (1) During the transition period provided in §668.404, beginning in any year in which the Secretary notifies an institution that a GE program could become ineligible based on a final GE measure for the next award or fiscal year for which the GE measure is calculated, an institution may choose to implement a loan reduction plan by--
(i) Offering to every student enrolled in the program at the time the Secretary notifies an institution that a GE program could become ineligible based on a final GE measure for the next award or fiscal year for which the GE measure is calculated, for that year and for each subsequent year up to the number of years equal to the length of the program, an institutional grant that replaces some or all of the amount each student borrows to reduce borrowing by an amount established by the institution; and
(ii) Offering to every student who enrolls in the program after the Secretary has notified an institution that a GE program could become ineligible based on a final GE measure for the next award or fiscal year for which the GE measure is calculated, for that year and for each subsequent year until the program achieves a passing GE measure or, at maximum, up to the number of years equal to the length of the program, an institutional grant that replace some or all of the amount each student borrows to reduce borrowing by an amount established by the institution.
(2) An institution may not coerce or require students to participate in the loan reduction plan.

(3) An institution must notify the Secretary of its adoption of a loan reduction plan and describe how it will be implemented no later than 30 days after receiving a final determination under paragraph (a) that the institution must provide borrower relief.
(4) The Secretary may require additional information about the institution's loan reduction plan, disapprove the plan, or require the institution to submit periodic reports on its implementation of the plan.
(5) For any award year during the transition period described in §668.404(g) in which the institution implements a loan reduction plan under this paragraph to the satisfaction of the Secretary, the Secretary waives the requirements in paragraphs (c), (d), and (e). However, the Secretary may reinstate any of these requirements if the Secretary at any time disapproves the plan or determines that the loan reduction plan is not satisfactorily implemented.

§668.411 Reporting Requirements for GE Programs.
While generally supportive of this subsection of the proposed regulation, which remains consistent with the prior reporting requirements, AACS would like to once again express our concern with the relationship between the revised reporting requirements under §668.411 and updated disclosure requirements under §668.412.

We note that, based on the change in reporting certificate program length by credential level to differentiate between less than a year, one year up to two years, and two years or longer, it is imperative to clarify that credential level is determined by academic year and not calendar year.

Institutions are required to disclose the normal time to complete on a calendar basis but it is the academic year or multiple thereof that determines borrower eligibility which impacts debt to earnings ratios. For example, a program of one academic year is only eligible for loans up to the maximum for one year, regardless of its length in calendar time which could vary based on attendance schedules. This is especially significant for programs that are measured in clock hours.

§668.412 Disclosure Requirements for GE Programs.
AACS lauds the Department for listening to the frustrations and concerns of the 2013 Negotiating Committee and accepting the initial responsibility for calculating most of the disclosure provisions.

The Department's ability to determine these computations and provide the results will most certainly reduce some of the administrative burden on institutions previously associated with the disclosure requirements and the regulation as a whole.

While AACS is generally supportive of the Department's list of disclosures, we are seeking several revisions which we believe will provide the consumer with more accurate and comparable information.

First, AACS opposes the Department's limitation on programs required to provide placement information to only those programs required to provide such information by their accrediting agency or State.

It is illogical to us that the Department would hold institutions and their programs subject to D/E metrics and not require all institutions subject to the rule to also provide placement statistics showing that the institution is focused on assisting graduates in finding gainful employment in the recognized occupation.

AACS is aware that the Department and the higher education community held meetings in conjunction with the implementation of the previous regulation in an effort to develop a definition for placement for all institutions, but that those negotiations failed to achieve consensus.

AACS urges the Department to re-open those discussions, and perhaps to add discussions to the consumer testing, to determine a definition which can be applied to all programs subject to the rule – not a subset of only those institutions which are required to provide this information for accrediting agencies or States.

Second, remaining consistent with our earlier comments beginning with §668.402 Definitions, and noted throughout this response, AACS requests that the Department amend the provisions related to cohort periods, returning the language previously proposed under the December Draft.

The Department has never produced data (under either the 2011 Regulations and corresponding Informational Rates or the recently published NPRM and corresponding 2012 Informational Rates) showing the effect of such a proposal on programs subject to the rule.

Moreover, the Department has provided little if any justification and rationale in defense of the longer time horizon to assess programs with minimal cohorts (n size $\leq$ 30).

Without the data and a clear indication that it would support the Department's presumption of need, AACS respectfully suggests that the Department is over-reaching with this proposal, and should weigh the benefits to both the Department and institutions in making this change.

We hope that upon further review the Department will agree with AACS that this degree of assessment, is unnecessary and will provide limited if any value compared to the administrative burden for all involved.

AACS' Proposed Regulatory Revisions:

1. Revise §668.412(a)(8) to read as follows:

(8) The placement rate for the program, as defined by the Secretary or required by the institution's accrediting agency or State if it is required to calculate a placement rate.

2. Revise §668.412(a)(11) to read as follows:

(11) As provided by the Secretary, the median earnings of any one or all of the following groups of students:
(i) Students who completed the program during the applicable *two-year period* used by the Secretary to calculate the most recent D/E rates for the program under this subpart.
(ii) Students who were in withdrawn status at the end of the applicable *two-year period* used by the Secretary to calculate the most recent D/E rates for the program under this subpart.
(iii) All of the students described in paragraph (a)(11)(i) and (ii).

§668.413 Calculating, Issuing, and Challenging Completion Rates, Withdrawal Rates, Repayment Rates, Median Loan Debt, and Median Earnings.
Again, AACS must begin our comments with appreciation for the Department's decision to take responsibility for determining the various rates, taking this administrative burden off of the institutions, and providing us with the opportunity to challenge the calculation if necessary.

And, remaining consistent, must also call attention to the Department's omission of the "or another Federal agency" language's inclusion within the subsection.

(iv) Obtaining earnings data.
The Secretary submits the final list to the SSA *or another Federal agency*. For purposes of this section SSA *or another Federal agency* returns to the Secretary—
(1) The median earnings of the students on the list whom SSA has matched to SSA earnings data, in aggregate and not in individual form; and
(2) The number, but not the identities, of students on the list, that SSA could not match.

§668.414 Certification Requirements for GE Programs.
As noted in AACS' response to the Conforming Provisions which precedes this section-by-section response to the newly proposed Subpar Q, we support the Department's efforts to streamline the program recognition and approval process and commend the Department for developing such clear and easily implementable provisions in this subsection.

§668.415 Severability.
AACS believes that the proposed provisions, while designed to operate independently, are so related and intertwined in the underlying goal to provide students with the information on a post-secondary education, that the whole proposed regulation cannot stand in piecemeal. As such, AACS opposes proposed §668.415 in its entirety.

We believe that the abandoning of any of the proposed regulations would leave substantial doubt that partial affirmance would comport to the agency's intent.

Further, we believe that if a Court were to hold a section of the proposed rule as illegal or otherwise invalid, it would undermine the totality of the administrative rule making process and would constitute rulemaking from the Bench.

AACS' Proposed Regulatory Revisions:

Repeal §668.415:
~~§668.415~~
~~If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.~~