Talking Points for AACS'
Office of Information and Regulatory Affairs Meeting
October 20, 2014

OVERVIEW:

AACS remains deeply concerned and frustrated with the Department's lack of response to our repeated requests for the release of complete and comprehensive data for all programs subject to the regulation and the socio-economic effects of moving forward with these regulations without additional assessment and evaluation of a comprehensive set of data.

AACS believes that neither the Department, nor the Office of Management and Budget's Office of Information and Regulatory Affairs, is fully capable of assessing the impact of the Gainful Employment regulations based upon the U.S. Department of Education's March 25, 2014 Notice of Proposed Rulemaking (NPRM) and the 2012 GE Informational Rates data.

Moreover, in light of the Department's most recent action related to institutional CDRs, and its arbitrary and discriminatory application of differential determinations and decisions by the Secretary and the Department to modify the calculation of institutional CDRs, AACS has new concerns regarding the equitable application of the proposed gainful employment regulation for all types of institutions and programs required to comply with the final regulations upon publication.

DISCUSSION:

Analysis and comment on the NPRM developed by Charles River Associates (CRA) and two leading researchers on the subject – Jonathan Guryan, Ph.D & Matthew Thompson, Ph.D – present a number of findings which elaborate on AACS' fundamental concerns. For example, Guryan and Thompson's Executive Summary concludes among other findings that:

The impact will be very large and the alternatives for the students impacted are very limited.

> The Department's analysis based on a single year of data shows that 20 percent of programs and 30 percent of students in the for-profit sector will fail the metrics. Our more complete analysis of the rule based on five years of data suggests that the impact may be even larger with between 13.1 and 21.8 percent of programs losing eligibility, though these large numbers understate the impact on students because programs with more students are more likely to fail the rule. We estimate that between 23 and 44.2 percent of students in for-profit programs are in programs that will become ineligible. Our estimates show that this would lead to between one and four million students being denied access to postsecondary education by 2020, and between 2 and 7.5 million students being denied access to postsecondary education over the next ten years. The Department reports much lower numbers of students impacted by assuming that nearly all students would find alternative programs to attend. Our analysis shows that much fewer reasonable alternatives actually exist for students and that the Department's assumptions are overly optimistic given the incentives to avoid low-income students that the gainful employment rule would create, the current constraints on funding for public institutions and the non-open enrollment policies of most public and non-profit institutions.

From AACS' perspective their findings highlight a number of concerns, including most prominently the considerable "unknown" in terms of how many programs and students may truly be impacted – lending further credence, we believe, to our fundamental concern about the lack of complete and comprehensive data. (See attachments from August 19, 2014 meeting with Mr. Roberto J. Rodriguez, Special Assistant to the President for Education and Mr. Tushar J. Seth, Senior Advisor within the U.S. Department of Education's Office of Planning, Evaluation, & Policy Development.)

Furthermore, what is not detailed here by Guryan and Thompson, but is unique to the cosmetology community, is the fact that the vast majority of our institutions are small businesses focused on a single set of disciplines within the cosmetology, beauty and wellness arena, and thus the loss of eligibility in one or more key programs is not only the potential elimination of that programs eligibility, but could very well mean the elimination of the school, its students, and all of its employees.

The impact will be very large on students who need to borrow more and have had less access to traditional post-secondary education.

> The proposed regulation would have a substantial impact on minority and female students, as well as poorer students and veterans. Our estimates suggest that between 21 and 39 percent of Hispanic students, between 25 and 40 percent of African-American students, and between 24 and 41 percent of female students are enrolled in impacted programs. In addition, we find that at least one in four, and as many as one in two, Pell recipients are in impacted programs.

From AACS' perspective their findings once again hit extremely close to home for the cosmetology community which is predominately, almost exclusively, female, and also maintains a higher than normal population of socio-economically challenged students, including both dependent and independent student populations, the majority of whom rely on both federal grant and loan assistance to subsidize their postsecondary educations.

Throughout the Federal Negotiations and in a subsequent meeting with high ranking Administration and Department of Education officials on August 19th as noted above, we have attempted to push for a more critical analysis of the disparate impact of the proposed regulations on independent vs. dependent students. In furtherance of this discussion we offer the following example which we believe clearly illustrates our concern.

Dependent vs. Independent Status (Eligibility and Borrowing Limits)

Dependent Students Borrow \$3,500 sub and \$2,000 Unsub per ACY = Total \$5,500
(plus interest of Unsub until the student enters repayment)

Independent Students Borrow \$3,500 Sub and \$6,000 Unsub per ACY = Total \$9,500
(plus interest of Unsub until student enters repayment)

Note: Based solely on the students dependency status, there is a 300% increase in additional loan eligibility of the independent student over the dependent student – resulting in a cumulative borrowing capacity which is 58% higher for an independent student over a dependent student.

Thus, ultimately, the effect on the amount of debt of an independent student vs. a dependent student is also drastically higher.

Dependent vs. Independent Status (Debt Burden)

Dependent Student Debt Burden \$3,500 + \$2,000 + (Interest Unsub at 5.41%) \$110 = \$5,610

Independent Student Debt Burden \$3,500 + \$6,000 + (Interest Unsub at 5.41%) \$325 = \$9,825

Conclusion: All things being equal, with no difference in program length, content, student support services, or any other variable, an Independent Student is likely to have a debt burden that is 175% more than Dependent Student per Academic Year.

The fundamental idea behind the proposed rule is flawed.

> In order to determine whether a program is a good investment for the student (and for taxpayers) the Department should be looking at the long-term gains from the education not at the level of income a few years after completion. By focusing on the level of earnings rather than the gains the Department effectively ignores much of the benefit of education and does not account for what students could have earned outside of the education. For example, the Department would deem a program successful if the graduates from that program borrowed \$12,000 and earned \$40,000 a few years after graduation even if those same students would have earned \$40,000 without going to school (a gain of \$0 at the expense of \$12,000). Similarly, the Department would deem a program unsuccessful if the graduates from that program borrowed \$12,000 and earned \$17,000 after graduation even if those students would have earned \$7,000 without going to school (the median earnings of high school dropouts). This is a gain of \$10,000 per year for an initial expense of \$12,000. This fundamental flaw in the proposed rule would deny access to students to programs that the Department admits have a net positive benefit.

From AACS' perspective their findings touch upon, but do not fully address the complete educational impact and ROI, not because the above examples are important – they are, and we support them. What the Guryen and Thompson assessment left out was the population of students who enroll in our institutions have already completed some or all of other forms of postsecondary education, then come to our institution for education which ultimately opens the door to a rewarding professional career.

While it is true that the regulations provide for these circumstances by limiting the application of loan volume only to that which was obtained for the specific program, the student ultimately is responsible for the repayment of all of the loan obligations (s)he has accrued, and the institution once again, as it all too often does, finds its eligibility linked to student repayment decisions which are out of our control (a topic which we will continue to discuss under the next finding.).

Pre-enrollment characteristics of students have an impact on post-graduation outcomes.

> The proposed rule ignores the fact that student outcomes are determined not only by the quality of programs, but also by student characteristics and other inputs from students. One possible unintended consequence of the proposed rule may be for institutions to restrict access to students who have the highest likelihood of success and therefore limit the educational opportunities of traditionally underserved populations (minorities, low-income students, etc.). Impeding access to historically underserved populations will contribute to income inequality in the U.S. and restrict access to college at a time when a college education may be as important as it has ever been for economic well-being.

From AACS' perspective their findings accurately and clearly point to a number of student centric concerns which have great bearing on the eventual outcome which reside well outside the institution's control. As noted in their summation, one of the few ways institutions can truly address these external forces is to severely restrict student access to the very individuals who we believe need and want it the most. Thus these actions may well expand, racial, gender, and socio-economic gaps within our society, while at the same time preventing our nation from regaining its foothold on employment and job-growth, and most assuredly failing to help obtain the Administration's goal of once again being the most credentialed country in the world by 2020.

The Department's conclusion that there is no relationship between the proposed gainful employment metrics and student characteristics is incorrect and based on a misinterpretation of statistical results.

> The Department attempts to provide statistical support to refute the allegation that a program's likelihood of passing the gainful employment metrics is dependent on the composition of Pell recipients and minority students in the program. Using the data described in the NPRM to replicate the Department's analyses shows that when examining the appropriate statistical results the Department's analyses finds a significant negative correlation between the percent of students who are Pell recipients and the likelihood of passing either the D/E or the pCDR metric. The Department's analyses also show a significant negative relationship between the percentage of minority students and the likelihood of passing the pCDR metric.

From AACS' perspective their findings highlight two major concerns.

The first, which AACS repeatedly noted to the Department throughout the Federal Negotiated Rulemaking sessions, were again presented during our August 19, 2014 meeting with Mr. Roberto J. Rodriguez and Mr. Tushar J. Seth, and we are once again highlighting with you as a portion of the final meetings is the highly differential impact of the proposed regulation on dependent vs. independent students.

Median Debt has been problematic since the first discussions surrounding the original proposed rule. Despite repeated requests during negotiations for ED to modify the calculation of debt to reflect the lower of mean or median, including confirmation by a representative from NCES that use of median is progressively less valid as cohorts become smaller, the proposed rule has not addressed the issue.

As previously illustrated in these talking points, there is a significant impact on the likelihood of an institution's ability to comply with the regulations based solely on the student population they choose to enroll (dependent vs independent students).

If more than half the graduates from a program are independent then the median debt will be derived from a subset of borrowers that are, by definition eligible for 50% higher loan amounts. It is important to note that a detailed proposal to utilize a sliding scale/risk adjusted model to modify the metrics based on student characteristics (percentages of Pell eligible and or independent students) was provided to ED in the final session, and while ED officials acknowledged that such an approach was very interesting and deserving of consideration, the proposed rule has not even considered the concept.

Second, AACS also agrees with their assertion that pCDRs will be impacted based upon the population served and that there is a negative relationship between the percentage of low-income and lower socio-economic enrollees and the likelihood that the institution will pass the pCDR metric.

Moreover, AACS finds recent actions undertaken by the Department to be particularly problematic. We are speaking directly to the recent determinations and decisions by the Secretary and the Department to modify the calculation of institutional CDRs for a select group of institutions of higher education in order to protect them from exceeding the required default triggers.

AACS is left to question whether or not the Department would seek to employ similar latitude at the programmatic level, and if so, would such grace only be granted to some but not all institutions or programs.

The rule makes no adjustments for macroeconomic conditions that are outside of a program's control.

> Since the rule sets a fixed threshold for passing each metric that does not adjust to changes in macroeconomic conditions, a program that passes during good economic times may fail during poor economic times due entirely to factors outside of the institution's control. This will also lead to "good" programs failing during poor economic times and "bad" programs passing during better economic time even when the training of those programs provided has not changed. In addition, the proposed regulation would restrict access to education during poorer economic conditions when education is most valuable and least costly.

From AACS' perspective, as previously noted, their findings are consistent with concerns we have previously raised in both written and verbal discussions with Department and Administration officials.