UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

360 DEGREE EDUCATION, LLC, d/b/a Cortiva Institute; and THE COALITION FOR CAREER SCHOOLS,

Plaintiffs,

v.

DEPARTMENT OF EDUCATION; and SECRETARY MIGUEL A. CARDONA, in his official capacity as Secretary of the Department of Education,

Defendants.

Case No. _____

Brief in Support of Plaintiffs' Motion for Temporary Restraining Order, Preliminary Injunction, and Stay

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INTRODUCTION

The U.S. Department of Education's "Bare Minimum Rule"—which restricts federal student aid to only career programs providing the bare minimum hours a State requires for licensure in a given field—is substantively and procedurally invalid. And if it goes into effect on its **Effective Date of July 1, 2024**, it will have immediate and irreparable consequences for Plaintiff Cortiva, for members of Plaintiff The Coalition for Career Schools, and for countless others around the country. The Court should thus provide prompt preliminary relief, in the form of a temporary restraining order and/or preliminary injunction, to prevent those irreparable harms and preserve the *status quo ante* while this litigation plays out. Alternatively, the Court may simply delay the Effective Date. *See* 5 U.S.C. § 705.

Plaintiffs readily meet the prerequisites for preliminary relief:

First, Plaintiffs are likely to succeed on their claims that the Bare Minimum Rule is substantively and procedurally invalid. Plaintiffs need to show a likelihood of succeeding only on *one* claim, *see, e.g.*, *Broadspire Servs., Inc. v. Wells*, No. 1:22-CV-163-H, 2022 WL 18587853, at *4 (N.D. Tex. Nov. 3, 2022), but Plaintiffs' three main claims are all strong and likely to succeed:

(a) the Bare Minimum Rule exceeds the Department's statutory authority, *see* 5 U.S.C. § 706(2)(C), because the Higher Education Act of 1965, as amended, ("HEA") does not allow the Department "to exercise any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any educational institution, school, or school system" absent express authority, 20 U.S.C. § 3403(b);

(b) the Bare Minimum Rule is arbitrary and capricious, *see* 5 U.S.C. § 706(2)(A), because the Department failed to address meaningful comments, failed to explain changes to a long-standing regime, and ultimately adopted an irrational rule; and

(c) the Bare Minimum Rule is procedurally invalid, *see* 5 U.S.C. § 706(2)(D), because it was not a "logical outgrowth" of the Proposed Rule, *Mock v. Garland*, 75 F.4th 563, 584 (5th Cir. 2023), thereby depriving Plaintiffs and the public at large a meaningful opportunity to participate in the rulemaking.

Second, Plaintiffs will suffer irreparable harm absent preliminary relief, as will countless other career schools, their students, their communities, and the workforce. This ill-conceived rule will have dramatic and perverse consequences, including pressuring students to forgo favorable Pell Grants for less favorable loans. For schools, it will immediately affect course design and enrollment and threatens longer-term effects that undermine the viability of some programs altogether. None of those harms can be unwound if the Court later invalidates the rule.

Third, the balance of the equities and the public interest also favor preliminary relief. Where, as here, the Federal Government is the defendant, those two factors merge, *see United States v. Texas*, 97 F.4th 268, 274 (5th Cir. 2024), and the Fifth Circuit has made clear that "the public is served when the law is followed," *Daniels Health Scis., L.L.C. v. Vascular Health Scis., L.L.C.*, 710 F.3d 579, 585 (5th Cir. 2013). Thus, if the Court agrees that Plaintiffs are likely to succeed on the merits and that the Bare Minimum Rule will cause irreparable harm absent preliminary relief, then the last two pieces fall easily into place.

Plaintiffs raise two additional house-keeping notes: (a) the Court should waive the requirement of a surety bond under Rule 65; and (b) as an alternative to an injunction, the Court has clear authority to stay the Effective Date of the Bare Minimum Rule. *See* 5 U.S.C. § 705.

The Court should enjoin Defendants from implementing the Bare Minimum Rule, or in the alternative, should delay the Effective Date pending the outcome of this litigation.

BACKGROUND

I. Under the Current, Longstanding 150% Rule, Career Schools Have Flexibility in the Length of Programs They Offer Students on Federal Student Aid

Since its introduction in 1965 and throughout its many renditions, the HEA has specifically provided a method for federal funding for students to attend either nonprofit institutions to pursue bachelor's degrees or proprietary programs that provide at least one year of education to prepare

students for employment.[1] Consistent with its congressional mandate to fund proprietary schools and their gainful employment programs, the Department proposed the 150% Rule on February 28, 1994, to allow flexibility for schools, States, and accreditors to decide the length of training to best prepare students while curbing perceived abuses. *See* 59 Fed. Reg. 9,526, 9,546–47. The 1994 proposal applied only to *clock hour* (not credit hour) programs[2] and stated that the Department found the relationship between the length of the program and entry level requirements for the recognized occupation was "reasonable if the number of clock hours provided in the program does not exceed by more than 50 percent the minimum number of clock hours required for training in the recognized occupation for which the program prepares the student, as established by the State in which the program is offered, if the State has established such a requirement." *Id.* at 9,571.

The Department promulgated this regulation—which became known as the 150% Rule—without change from the proposed rule. *See* 59 Fed. Reg. 22,387, 22,427. In response to comments, the Department explained that the purpose behind the provision was to "curb existing abuses" by institutions and to "specifically target areas of past abuse." *Id.* at 22,387. The behavior that the Department was referencing has come to be known as "course stretching." *Id.* at 22,366. The Department questioned the "motives" of any institution, claiming it is necessary to "greatly exceed" the minimum number of clock hours required by a State. *Id.* at 22,387. The 150% Rule

[1] *See* Pub. L. No. 89-329, 79 Stat. 1219, 1248, § 435(a) (1965) (defining "eligible institutions" as nonprofit or public institutions that provide educational programs for bachelor's degrees and as "any school which provides not less than a one-year program of training to prepare students for gainful employment in a recognized occupation"); Pub. L. No. 90-575, 82 Stat. 1014, 1023 (1968) (establishing that "vocational school[s]" qualify as eligible institutions under the HEA); 20 U.S.C. § 1088(b)–(c) (1994) (providing that "proprietary institutions of higher education" and "postsecondary vocational institutions" can receive federal funding for career education).

[2] Clock hour programs refer to programs that count the actual hours students spend attending class or engaging in other instructional activities. Credit hours refer to the number of credits a student receives for enrolling in and successfully completing a given course.

clearly established 150% of minimum hours as a reasonable length that does not "greatly exceed" those standards. The 150% Rule is currently codified at 34 C.F.R. § 668.14(b)(26)(ii)(A).

II. The Department Has Adopted a New Bare Minimum Rule Eliminating the Flexibility That the 150% Rule Offered, Without a Reasoned Justification

Without any evidence that the 150% Rule was no longer working, on May 19, 2023, the Department published a Notice of Proposed Rulemaking ("Proposed Rule") that—among five other major topics in a 212-page document—included proposed changes to 34 C.F.R. § 668.14(b)(26)(ii)(A). The Department stated that it planned to amend the 150% Rule

> to limit the number of hours in a gainful employment program to ***the greater of*** the required minimum number of clock hours, credit hours, or the equivalent required for training in the recognized occupation for which the program prepares the student, as established by the State in which the institution is located, if the State has established such a requirement, ***or*** as established by any Federal agency or the institution's accrediting agency.

88 Fed. Reg. 32,300, 32,320 (emphasis added). The Department added that "[l]onger programs . . . are more likely to result in higher debt and a longer period of enrollment without requisite career benefits." *Id.* at 32,381. And it asserted that "current regulations . . . have led to situations where institutions have offered more hours than were necessary for a student to become licensed in the State where the institution was located." *Id.* at 32,382.

Despite the massive scope of the Proposed Rule, the Department refused to extend the period for comment beyond 30 days. Instead, on October 31, 2023, the Department published a Final Rule that inverted State minimums into maximums. *See* 88 Fed. Reg. 74,568 (the "Bare Minimum Rule"). The Bare Minimum Rule requires career schools to

> [d]emonstrate a reasonable relationship between the length of the program and the entry level requirements for the recognized occupation for which the program prepares the student by limiting the number of hours in the program to the greater of . . . [t]he required minimum number of clock hours, credit hours, or the equivalent required for training in the recognized occupation for which the program prepares the student, as established by the State in which the institution is located, if the State has established such a requirement or as established by any Federal agency.

Id. at 74,697.

To justify the change to the 150% Rule, the Department stated that, even though it had long given "latitude for institutions to provide quality programs and furnishes a sufficient safeguard against the abuses of course stretching," any hours beyond the bare minimum require students and taxpayers to pay a substantial amount "for training that is not necessary to obtain employment." *Id.* at 74,638. In response to commenters' concerns about limiting educational opportunities and failing fully to prepare students for the workforce, the Department cited three studies discussed *infra*. It claimed these studies show that programs that are unnecessarily long may interfere with a student's ability to persist and complete, may cost more in tuition but not lead to higher wages, and delay the student's entry into the workforce. None of those studies related to the 150% Rule or analyzed whether it was wise to overhaul federal student aid for career education by turning State minimum licensure requirements into maximum course lengths. *Id.* at 74,639. In response to comments that additional hours beyond state minimums are "critical for success," the Department curtly suggested that was not their problem; commenters should approach their States about revising the program length requirements or offer the coursework outside of the Title IV, HEA programs, which receive federal student aid. *Id.* at 74,641.

The Department recognized the Bare Minimum Rule's impact and stated its intent fundamentally to change career programs by preventing the use of federal student aid for any part of a program that was longer than a State's requirement. *Id.* at 74,637. Yet, it simultaneously denied it was "dictating the length of a particular program[] or its curriculum." *Id.*

III. Cortiva and Its Students, as Well as Similarly Situated Career Schools and Students, Will Be Harmed If the Bare Minimum Rule Goes Into Effect on July 1, 2024

Cortiva trains students in a variety of careers and assists them to become licensed practitioners in the health, beauty, and wellness industries. The various Cortiva entities operate a

total of seven schools across five states, including a school located in Arlington, Texas, that will be severely impacted by the Bare Minimum Rule. Among other programs, Cortiva's Arlington campus operates a Professional Massage Therapy Program ("PMT Program") that is eligible for federal funds under Title IV of the HEA.

Cortiva's student body is mostly female (72%) and very diverse (64% of its students are Black or African American, and 19% are Hispanic). Ex. A (Heller Decl.) ¶ 11. Cortiva's students currently can accept Pell Grants (which need not be repaid and are reserved for the financial neediest students) because Cortiva's program is at least 600 clock hours. *See* 20 U.S.C. § 1088(b). Indeed, 84.6% of Cortiva's Arlington campus active students currently receive Pell Grants. But with the Bare Minimum Rule's changes, those students will no longer be able to receive those Grants because Texas's minimum requirements for licensed massage therapists is 500 hours. Ex. A (Heller Decl.) ¶ 10; *see also* 16 Tex. Admin. Code § 117.40. The inevitable result of the Bare Minimum Rule will be either (a) those students are forced to find different (and less beneficial) types of loans[3] or (b) Cortiva will have to ultimately shut its doors. Closure would result in hundreds of fewer jobs created every year in Texas and approximately 15 lost jobs at Cortiva.

Other career schools, including members of Plaintiff The Coalition for Career Schools,[4] will also be adversely affected. Bellus Academy, a coalition member that operates schools in

[3] *See, e.g.*, Spiros Protopsaltis & Sharon Parrot, *Pell Grants – a Key Tool for Expanding College Access and Economic Opportunity – Need Strengthening, Not Cuts* (July 27, 2017), https://www.cbpp.org/research/pell-grants-a-key-tool-for-expanding-college-access-and-economic-opportunity-need (explaining that Pell Grants are among the best tools to help low-income populations have access to education and have better economic opportunities).

[4] Plaintiff The Coalition for Career Schools is a coalition of career schools that offer gainful employment programs and companies that conduct business with career schools. Because of the Department's sudden implementation of the Bare Minimum Rule, members of Plaintiff Coalition for Career Schools are now required to either dilute their programs so students are not as prepared to operate in their respective careers or ask students to finance their degrees through means less advantageous to the students than under the 150% Rule regime.

California and Kansas, will be forced to eliminate some programs altogether, lose Pell Grant eligibility for others, and forego the opportunity for international certification for students who are military spouses and serve abroad. Ex. B (Lynch Decl.) ¶¶ 8–11, 16–18.

Even the California Board of Vocational Nursing and Psychiatric Technicians wrote a March 14, 2024, letter to the Department, urging the Department to delay the implementation of the Bare Minimum Rule by at least 18 months. *See* Ex. C. As California explained:

> California law currently requires LVN [(licensed vocational nurse)] education programs under BVNPT to consist of no less than 1530 hours to cover required content. (Cal. Code Reg. ti. 16 § 2532, subd. (a).) BVNPT currently oversees 168 LVN education programs, 133 of which currently require between 1550-1840 hours. The nearly 80 percent of programs that currently require more than 1530 hours would no longer be eligible for Title IV funding when 34 CFR 668.14(b)(26)(ii) is implemented.

Id. at 1. It went on to state that

> Unless the implementation of 34 CFR 668.14(b)(26)(ii) is delayed, California will likely experience negative impacts, such as:
>
> - The nursing shortage in the nation's most populous state would be exacerbated if the existing schools decide to not admit any new student cohorts until their program change applications are approved, potentially reducing the number of nursing students in the pipeline between July 1 and December 31 of this year by up to 4000.
>
> - Vocational nursing students may turn to riskier or less favorable means to finance their education if existing schools decide to continue enrolling students into programs that are no longer eligible for Title IV funding. The average tuition at the private programs ranges from $20,000 to $38,000 and more than half of the students depend on Title IV.

Id. at 2. The Bare Minimum Regulation will not aid the national nursing shortage.

Finally, companies like Pivot Point International, Inc. and Borboleta Beauty that collaborate with career schools will suffer as such companies will have fewer people to employ. Ex. D (Cyrenne Decl.) ¶¶ 6–11; Ex. E (Alexander Decl.) ¶¶ 3–11. For businesses like PPI and Borboleta, the education that career colleges provide is essential to their workforce.

ARGUMENT

I. Plaintiffs Are Entitled to a Temporary Restraining Order and Preliminary Injunction

The Court should issue a preliminary injunction to prevent the Department from enforcing an unlawful and procedurally invalid rule to the detriment of Plaintiffs and other similarly situated career schools. A preliminary injunction will allow the Court to preserve the *status quo ante* for a limited time while rendering a meaningful decision on important statutory and APA challenges to the Bare Minimum Rule. *See Mississippi Power & Light Co. v. United Gas Pipe Line Co.,* 760 F.2d 618, 627 (5th Cir. 1985) ("The purpose of a preliminary injunction is to prevent irreparable injury so as to preserve the court's ability to render a meaningful decision on the merits."). A TRO "is analyzed using the same factors applicable to preliminary injunctive relief." *Costa v. Bazron*, 456 F. Supp. 3d 126, 133 (D.D.C. 2020) (cleaned up); *Lee v. Verizon Commc'ns Inc.*, No. 3:12-CV-4834-D, 2012 WL 6089041, at *1 n.2 (N.D. Tex. Dec. 7, 2012) ("[A] TRO is simply a highly accelerated and temporary form of preliminary injunctive relief, and requires plaintiffs to establish the same four elements . . ." (citation and internal quotation marks omitted)).

To obtain a TRO or preliminary injunction, Plaintiffs must demonstrate: (1) they are likely to succeed on the merits; (2) they will likely suffer irreparable harm without an injunction; (3) the balance of equities favors issuing an injunction; and (4) it is in the public interest to issue the injunction. *Winter v. Nat. Resources Defense Council, Inc.*, 555 U.S. 7, 20 (2008); *Netflix, Inc. v. Babin*, 88 F.4th 1080, 1099 (5th Cir. 2023). When the government is the defendant, the last two factors merge. *See Nken v. Holder*, 556 U.S. 418, 435 (2009) (explaining that "[t]he third and fourth factors . . . merge when the Government is the opposing party").

A. Plaintiffs Are Likely to Succeed on the Merits of Their Statutory and Administrative Procedure Act Claims

Plaintiffs are likely to succeed on their claims that the Bare Minimum Rule exceeds the Department's statutory authority, is arbitrary and capricious, and is not a logical outgrowth of the proposed rule. Plaintiffs need a likelihood of success on only one of these three claims.

1. Plaintiffs Are Likely to Succeed on Their Claim that the Department Exceeded Its Statutory Authority (Count I)

Plaintiffs are likely to succeed on their claim that the Rule should be set aside and vacated under 5 U.S.C. § 706(2)(C) because the Department overreached by unlawfully exercising direction, supervision, or control over curriculum, programs of instruction, and administration.

The HEA expressly provides that the Department lacks authority

> to exercise any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any educational institution, school, or school system, over any accrediting agency or association, or over the selection or content of library resources, textbooks, or other instructional materials by any educational institution or school system, ***except to the extent authorized by law***.

20 U.S.C. § 3403(b) (emphasis added). Congress's stated intention was "to protect the rights of State and local governments and public and private educational institutions in the areas of educational policies" and to "not increase the authority of the Federal Government over education or diminish the responsibility for education which is reserved to the States and the local school systems and other instrumentalities of the States." 20 U.S.C. § 3403(a); *see also* 20 U.S.C. § 1232a (prohibiting interpreting any federal law to allow federal "direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any educational institution, school, or school system").

As commenters noted, the Bare Minimum Rule contradicts this limitation by setting a maximum program length, which effectively directs, supervises, and controls the curriculum,

program of instruction, or administration of educational institutions.[5] A school's program will not qualify to receive any federal student aid under Title IV unless the program is the bare minimum length for state licensure with respect to an occupation. Students who enroll in any gainful employment program longer than the bare minimum length on or after July 1, 2024, will lose access to *any* federal student aid.

Although federal law includes an exception to § 3403(b) for "[s]ecretarial determinations made regarding the appropriate length of instruction for programs measured in clock hours," 20 U.S.C. § 1099c-1(e), the Bare Minimum Rule is not such a determination. It applies to *all* gainful employment programs, whether they are measured in clock hours, credit hours, or any other measurement.[6] Specifically, the Bare Minimum Rule limits federal student aid to "[t]he required minimum number of clock hours, credit hours, or the equivalent required for training in the recognized occupation . . . as established by the State in which the institution is located . . . ." 34 C.F.R. § 668.14(b)(26)(ii)(A) (effective July 1, 2024). Some gainful employment programs like Cortiva's PMT Program use credit hours, not clock hours.[7] The Bare Minimum Rule, however, applies to these credit hour programs in violation of the statutory prohibition in § 3403(b).

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[5] *See* CECU Public Comment submission to Docket ID ED-2023-OPE-0089 at 79; Bellus Academy Public Comment submission to Docket ID ED-2023-OPE-0089 at 6. The full docket for the Final Rule, including the comments submitted during the rulemaking process, is available at https://www.regulations.gov/docket/ED-2023-OPE-0089.

[6] The rule would also result in significant confusion as some states do not use "credit hours" or "clock hours" in their requirements. For example, the Final Rule would apply to New York's registered professional nurse or licensed practical nurse requirements for "30 semester hours." 8 NY ADC 52.12(b)(1)(i). Similarly, under the Final Rule, practical nursing programs in the District of Columbia would be subject to a minimum of "six hundred (600) clinical hours." D.C. Mun. Regs. tit. 17 § 5608. New Hampshire would be subject to the state's minimum of "600 hours of nursing classroom instruction." NH ADC Nur 602.12(c).

[7] Other credit hour programs include Elgin Community College (Illinois)'s "Massage Therapy Vocational Specialist" certificate program which requires a minimum of 38.5 credit hours, https://catalog.elgin.edu/degree-programs-certificates/career-technical/career-technical-degrees-certificates/massage-therapy/#certificatestext; and Maricopa Community Colleges (Arizona)'s

The Department also never relied on § 1099c-1(e)'s clock-hour authority to justify the Bare Minimum Rule. It is well-established that "[a]n agency must defend its actions based on the reasons it gave when it acted." *Dep't of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1, 24 (2020); *see also All. for Hippocratic Med. v. U.S. Food & Drug Admin.*, 78 F.4th 210, 257 (5th Cir.) (Ho, J., concurring in part) ("[E]stablished precedent requires us to review [an agency's] action based on the path it took—not the path it might have taken."). Here, the Department never cited § 1099c-1(e) in the Notice of Proposed Rulemaking and did not request any comments on whether it could impose a bare-minimum restriction on clock hour programs under § 1099c-1(e). And while the Department cited § 1099c-1(e) in the Final Rule, it did so only in the context of responding to a comment about a different issue—not in providing the statutory justification on which it relied for the Bare Minimum Rule. *See* 88 Fed. Reg. at 74,577. There is thus no basis to conclude that the Bare Minimum Rule is justified by § 1099c-1(e), which the Department did not rely on and which does not justify the rule as written in any event. Even if that stray reference counted as justifying the rule, that would simply reinforce that the Department failed to provide Plaintiffs and other interested parties adequate notice to allow for meaningful comment and is thus precluded from enforcing a Final Rule that does not represent a "logical outgrowth" of the Proposed Rule. *Mock*, 75 F.4th at 584.

2. Plaintiffs Are Likely to Succeed on Their Claim That the Bare Minimum Rule Is Arbitrary and Capricious (Count II)

Plaintiffs are likely to succeed on their claim that the Bare Minimum Rule should be set aside under 5 U.S.C. § 706(2)(A) because the rule is arbitrary and capricious in at least three ways: (1) it fails to justify turning State *minimums* into *maximum* requirements; (2) it turns a safe harbor

"Certificate in Completion in Massage Therapy" which requires the completion of 36-40 credit hours, https://www.maricopa.edu/degrees-certificates/health-sciences/massage-therapy-5144-ccl.

into a strict-liability trap; and (3) it provides no reasoned justification for regulatory changes to the longstanding 150% Rule, which has been in place for 30 years.

The APA provides that courts shall "hold unlawful and set aside agency action" that is "arbitrary, capricious, [or] an abuse of discretion." 5 U.S.C. § 706(2)(A). Agency action thus must "be reasonable and reasonably explained." *F.C.C. v. Prometheus Radio Project*, 592 U.S. 414, 423 (2021). That standard is "searching and careful," *Univ. of Tex. M.D. Anderson Cancer Ctr. v. HHS*, 985 F.3d 472, 475 (5th Cir. 2021) (citation omitted), and has "serious bite," *Wages & White Lion Invs., LLC v. FDA*, 16 F.4th 1130, 1136 (5th Cir. 2021). "[T]he agency must examine the relevant data and articulate a satisfactory explanation for its action including a 'rational connection between the facts found and the choice made.'" *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins.*, 463 U.S. 29, 43 (1983) (citation omitted); *see also DHS v. Regents*, 591 U.S. at 33 (agency acted arbitrary and capriciously when it did not properly "assess whether there were reliance interests, determine whether they were significant, [or] weigh any such interests against competing policy concerns"). Thus, "[i]llogic and internal inconsistency," *Chamber of Comm. v. Dep't of Lab.*, 885 F.3d 360, 382 (5th Cir. 2019), or "shortcomings in the agency's explanations" doom the agency action, *Sw. Elec. Power Co. v. EPA*, 920 F.3d 999, 1014, 1018 (5th Cir. 2019).

First, the Bare Minimum Rule is arbitrary and capricious because the Department failed to justify the reasonableness of pegging the *maximum* hours for a program to the state-law *minimum*. The Bare Minimum Rule dictates that, for educational programs measured in clock hours, credit hours, or the equivalent, the State's minimum hour requirement is now the maximum length for federal student aid without explanation. States appropriately exercise authority to set program length requirements for gainful employment programs by setting minimum requirements. States enacted their minimum licensure requirements while the 150% Rule was in effect, and their

legislatures certainly had no occasion to believe the Federal Government would treat those *minimum* licensure requirements as *maximums*. States set minimums out of concern that programs for certain occupations are not long enough—not that they are too long. States certainly have the *authority* to set a maximum program length, but they have not used it. Nor have they given any indication that the Federal Government should construe their minimums as maximums.[8]

Commenters raised concerns about looking to state minimums, but the Department gave them short shrift. The Department advised schools to contact their State legislatures or "offer the coursework outside of the Title IV, HEA programs." 88 Fed. Reg. at 74,641. Another commenter raised concerns that State regulators move too slowly to respond to the rule change, but the Department said it "cannot speculate on how quickly or slowly" licensure requirements are updated, plus the rule would not take effect for 7 months after publication. *Id.* These responses—essentially, "go away and leave us alone"—are the definition of arbitrary and capricious. The Department is willfully choosing not to address legitimate concerns. The legislatures in States like Montana, Nevada, North Dakota, and Texas hold session only every other year, meaning some States will not be able to change their minimum hour requirements for gainful employment programs until at least 2025.

Indeed, the Department's willingness to create arbitrary carve-outs—for distance education programs, correspondence courses, and certain nursing programs that require a degree—shows that the Department is not genuinely concerned about student debt or the "excessive length" of programs. Indeed, distance education programs can, by the Department's own logic, continue to provide programs that are too long, too expensive, and lead to too much student debt. And the

[8] *See* CECU Public Comment submission to Docket ID ED-2023-OPE-0089 at 79.

Department appears to be perfectly fine with that. Yet, it has not treated gainful employment programs equally or explained why it won't.

Second, the Department acted arbitrarily and capriciously by converting a program intended to be a safe-harbor into a strict-liability trap. The Department stated that the Bare Minimum Rule provides a safe harbor for an educational institution to "[d]emonstrate a reasonable relationship between the length of the program and the entry level requirements for the recognized occupation for which the program prepares the student by limiting the number of hours in the program to" a certain prescribed length. 34 C.F.R. § 668.14(b)(26)(ii) (effective July 1, 2024). The Bare Minimum Rule, however, imposes an *absolute maximum* for program length. Specifically, the Department has since made clear that "[a]pplicable GE programs that exceed these length restrictions *by any amount* are ineligible *in their entirety* to participate in the Title IV programs."[9] The Department does not explain how it is reasonable to exclude a gainful employment program that exceeds a State's minimum even by one hour from access to federal student aid. That is quintessentially arbitrary.

Third, the Department nowhere provided a reasoned justification for regulatory changes to the longstanding 150% Rule, which has been in place for 30 years. An agency is required to "provide reasoned explanation for its action would ordinarily demand that it display awareness that it *is* changing position," and "of course the agency must show that there are good reasons for the new policy." *F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009). That hurdle is higher when a longstanding policy "engendered serious reliance interests that must be taken into

[9] Federal Student Aid, "Implementation of Program Length Restrictions for Gainful Employment (GE) Programs," GEN-24-06 (April 15, 2024), https://fsapartners.ed.gov/knowledge-center/library/dear-colleague-letters/2024-04-15/implementation-program-length-restrictions-gainful-employment-ge-programs (emphasis added).

account." *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 222 (2016) (quoting *Fox*, 556 U.S. at 515). "[A]n 'unexplained inconsistency' in agency policy is 'a reason for holding an interpretation to be an arbitrary and capricious change from agency practice,'" *id.* (quoting *Nat'l Cable & Telecommunications Ass'n v. Brand X Internet Servs.*, 545 U.S. 967, 981 (2005)).

The Bare Minimum Rule results in additional not less debt for students. The "Department issued final regulations related to certification procedures for institutions participating in the Title IV, HEA programs to provide important protections for students to ensure that their programs do not result in unnecessary debt and can meet their educational goals." GEN-24-03, n.9 *supra*. Ironically, the April 15 Guidance acknowledges that "in some cases a GE program will no longer qualify for Federal Pell Grant eligibility and will need to satisfy placement and completion rate requirements in order to qualify for participation in the William D. Ford Direct Loan program." *Id*. Contrary to the Department's goals to prevent unnecessary debt, the Department concedes that the Bare Minimum Rule will require students who are otherwise qualified for Pell Grants to take out loans and go into debt because programs, like Cortiva's PMT Program, will be required to be 100 hours less than the threshold for Pell Grant eligibility.

The 150% Rule took into account disparities among States' minimum requirements. For example, 300 hours of training are required to become licensed as a massage therapist in Utah, whereas 1,000 hours are required in Nebraska and New York.[10] Similarly, 1,800 hours of training are required to become licensed as a cosmetologist in West Virginia,[11] whereas 1,000 hours are required in Vermont, Texas, Rhode Island, New York, Massachusetts, and California.[12] If

[10] *See* Utah Code Ann. § 58-11a-302(4)(a)(iv); Neb. Rev. St. §§ 38-1710, 1703; 8 NYCRR 52.15(b).
[11] *See* W. Va. Code, § 30-27-3(l).
[12] *See* Vt. Admin. Code 20-4-300:5-2(b); 16 Tex. Admin. Code § 83.202(a); 19 NYCRR 162.4(a); 240 CMR 2.01(1); Cal. Bus. & Prof. Code §7362.5(a).

institutions in States offered programs up to 150% more than the State minimum, then a student may more easily satisfy the requirements of a different State. The 150% Rule allowed students in various states to more easily transfer their skills and continue their occupations in other States and thus to level the "playing field," as Cortiva Institute noted in its public comment.[13]

Over the 30 years since enactment, the 150% Rule has given rise to substantial reliance interests—for institutions, for States, for students, and for employers who hire students from these programs. And in light of that reliance upon a decades-old rule, the Department's short justification for the change is simply inadequate. The Department's stated reason for the change proceeds essentially as follows: the Department is protecting students from being charged for unnecessary training, *see* 88 Fed. Reg. at 74,636; training over the statutory minimum is necessarily deemed "unnecessary" by the Defendants, *see id.* at. 74,640; therefore, no participation should be permitted for programs over a State's statutory minimum, *see id*. By the Department's logic, States, through the promulgation of clock hour minimum requirements, intend to establish that the bare minimum is all the training that students could or should receive, not only to be eligible for licensure, but to be successful in their career.

There are two major issues with this conclusion: *First*, the 150% Rule was created in 1994. Many state licensure requirements have been either created or modified in the last 30 years. As stated above, the legislatures would have been aware of the 150% Rule and created their minimums with the 150% Rule in mind. *Second*, certain public commenters[14] argued that, by setting minimum

[13] In Cortiva's Public Comment submission to Docket ID ED-2023-OPE-0089, Cortiva focused on the impact of the Final Rule on the Florida-based school. The comment suggested that, based on Cortiva's understanding of the Proposed Rule, the Texas-based school would not be. However, after subsequent research and additional consideration in light of the Final Rule, Plaintiff is now aware that, in fact, the Bare Minimum Rule will have significant effects on the Texas-based school.
[14] *See* CECU Public Comment submission to Docket ID ED-2023-OPE-0089 at 79; Thompson Coburn Public Comment submission to Docket ID ED-2023-OPE-0089.

requirements, States indicated their primary concern is that career programs were not long enough and that, if a State thought a program was too long, it could set a maximum length in its reasonable discretion.[15] The Department did not directly or meaningfully respond.

Instead of addressing comments from Cortiva and others, the Department repeatedly claimed that programs are "unnecessarily long" and that they "may interfere" with students' ability "to persist and complete" their programs. 88 Fed. Reg. at 74,639. But the Department provided no support for these *ipse dixit* assertions. Similarly, the Department stated that programs longer than the State minimum licensing requirements "may have engaged in course stretching." *Id.* at 74,640. But again, the Department provides no support for that obvious bit of speculation.

The Department cited three studies, but none relates to the 150% Rule or demonstrates that programs exceeding State minimum requirements harm students.

1. The Department cited Nicolas Acevedo et al., "Occupational Licensing and Student Outcomes," *Postsecondary Equity & Economics Project*, February 2022 (the "Acevedo Study") for the allegation that there is a "lack of any correlation" between setting higher hours requirements in massage therapy or cosmetology and increased wages. *See* 88 Fed. Reg. 74,639. But that study took an "average wage" for all individuals in the given occupation; did not control for several factors, including location of employment and whether the persons worked part-time or full-time; and did not distinguish between different ages and experience levels. The Acevedo Study also made clear that it could not make any conclusion on causal relationships "and more research is

[15] "Indeed, certain States have exercised their authority to set program length requirements for career programs by setting **minimum** requirements. This shows both that States have this authority, and their primary concerns is that career programs are not long enough. Should a State have concerns that a particular program or too long, it could set a maximum length in its reasonable discretion." CECU Public Comment submission to Docket ID ED-2023-OPE-0089 at 79 (emphasis in original); *see also* Thompson Coburn Public Comment submission to Docket ID ED-2023-OPE-0089.

needed to explore the causal relationship between licensing hours and student outcomes." It did not examine whether programs in certain States that had higher numbers of hours than the minimum did better than programs that were set at the minimum. Instead, the Acevedo Study critiqued States with longer hours requirements without examining whether students trained in those States fared better than students in programs with only the minimum hours in other States. At best, the Acevedo study is a call for further study.

2. The Department cited Kaila M. Simpson, et al., "Examination of Cosmetology Licensing Issues," American Institutes for Research, August 30, 2016 (the "Simpson Study") to demonstrate a lack of correlation between curriculum hours and wages or training hours and safety/complaints. *See* 88 Fed. Reg. at 74,639. But the Simpson Study acknowledges that its wage data was unreliable: "[T]here are two primary limitations to these data: (1) the data reported incorporate reported hourly wage information, which excludes data on tips—a significant source of income for those in the service industry; and (2) wage estimates are for wage and salary workers only, which excludes self-employed persons." Those are gaping holes. The Simpson Study also acknowledges that its data was unreliable due to "extensive limitations in the available unemployment data for the cosmetology profession" and that its conclusion was of limited value because it had to collect and rely on anecdotal evidence rather than data which "limited" its conclusions' "usefulness." That is no basis to upend 30 years of regulatory certainty.

3. The Department cited Stephanie Riegg Cellini and Kathryn J. Blanchard, "Quick College Credentials: Student Outcomes and Accountability Policy for Short-Term Programs," *Brookings Institute*, July 22, 2021 (the "Cellini Study")[16] for the proposition that programs with "lower training requirements . . . tend to result in lower earnings . . . which means spending an additional

[16] The Cellini Study was completed by two of the same authors of the Acevedo Study.

few hundred or thousand dollars to attend an unnecessarily long program may be the difference between a positive and negative return on investment." 88 Fed. Reg. 74,639. While the Cellini Study concludes that lower training requirements means lower earnings, the Department's extrapolation that additional hours could result in a negative return on investment ("ROI") appears nowhere in the study and is pure speculation by the Department. Further, the Cellini Study did not control for full- versus part-time work. The Bare Minimum Rule is also flatly contrary to the conclusion of the Cellini Study: that federal student aid should not be used for lower hour programs, not that it should be available *only* for the bare minimum.

None of these studies comes close to justifying the nullification of a 30-year-old rule on which career schools have reasonably relied. When a long-standing rule is subject to a challenge, the agency must provide a "more reasoned explanation" for "why it deemed it necessary to overrule its previous position." *Encino Motorcars*, 579 U.S. at 222. The Bare Minimum Rule threatens, at a minimum, to disrupt career programs by forcing them to change their curricula in a matter of months absent State action. It also has the potential to wipe out entire schools because of this change, leaving potential students without a way to increase their income and communities without workers willing to operate in fields served by those schools.

Plaintiffs are thus likely to succeed on the merits of their claim that the Department acted arbitrarily and capriciously.

3. Plaintiffs Are Likely to Succeed on Their Claim That the Bare Minimum Rule Violates the APA Because It Is Not a Logical Outgrowth of the Proposed Rule (Count III)

Plaintiffs are likely to succeed on their claim under 5 U.S.C. § 706(2)(D) because the Bare Minimum Rule does not reflect a "logical outgrowth" of the Proposed Rule and thus failed to provide the public with the "fair notice" the APA requires. *Long Island Care at Home, Ltd. v. Coke*, 551 U.S. 158, 174 (2007). Specifically, the Department did not signal that it might restrict

the availability of federal student aid based entirely on State requirements, since the Proposed Rule also provided a role for an institution's accreditor, and the Department never discussed a States-only alternative. That failure prevented Plaintiffs and other stakeholders from commenting on the negative implications of that choice in a meaningful way.

The APA requires agencies to give notice of proposed rulemakings to the public to allow for comments on the same. *See* 5 U.S.C. § 552(a)(1)(D) & (E) (requiring agencies to publish in the Federal Register substantive rules of general applicability adopted as authorized by law, and all amendments, revisions, or repeals). That publication must occur not less than 30 days before the rule is effective, and the agency must also provide notice about (1) what it proposes to do and (2) the bases for its proposed action. *See* 5 U.S.C. § 553(b).

Final rules that are not, at least, a "logical outgrowth" of the proposed rule fail to provide the public with "fair notice" of the rule that the APA requires.[17] Similarly, agencies cannot issue a final rule broader in scope than the proposed rule without notice, *see American Iron and Steel Institute v. EPA*, 568 F.2d 284, 291 (3d Cir. 1977) (holding a proposed rule did "not apprise an interested person" that the possible change to the rule would affect them), nor can an agency alter a rule's language without first telling the public, *Allina Health Services v. Sebelius*, 746 F.3d 1102, 1106 (D.C. Cir. 2014) (holding final rule invalid after agency "announced a final rule adopting the exact opposite interpretation of [a] statute").

[17] *Long Island Care*, 551 U.S. at 174. Final rules cannot be the first opportunity for comments by the public, *see Daimler Trucks N. Am. LLC v. EPA*, 737 F.3d 95, 100 (D.C. Cir. 2013) (holding that the EPA could not issue a final rule that contained significant changes not in the proposed rule), nor can the agency express its intent for the first time when issuing a final rule, *see Shell Oil Co. v. EPA*, 950 F.2d 741, 751 (D.C. Cir. 1991) ("[A]n unexpressed intention cannot convert a final rule into a 'logical outgrowth' that the public should have anticipated.").

In the Proposed Rule, the Department proposed that one of the standards for the required minimum hours would be the hours established by the institution's accreditor. Were that the standard, in some instances, the number of clock hours required for programs would exceed State minimum requirements, and many programs that are now in jeopardy may have been spared. Without explanation or notice, the Department removed the provision stating that it "would undercut the purpose of focusing on State requirements, as an accreditor could decide to simply set hour requirements higher than what a State deems necessary." *See* 88 Fed. Reg. at 74,637. Never mind that the Department never disclosed this "purpose" in the Proposed Rule. Public comments did not recommend removing this accreditor provision. Had the public been made aware that the Department would potentially remove the accreditor-related provision, public comment submissions would have addressed the serious problems with removing accreditors from the decision-making process. Notifying the public of this possibility also would have provided the opportunity for the public to provide information, data, and/or argument as to why the provision should not be removed from the Bare Minimum Rule.

That failure is fatal because accreditors are an important part of the regulatory triad, which includes States and the Department. The Department failed to signal it was considering removing one leg of the triad, accreditors, entirely from the process without adequate opportunity to comment on how that harms students, institutions, employers, and the general public. Thus, the Bare Minimum Rule is not a logical outgrowth of the Proposed Rule.

Separately, the Department never notified stakeholders in its proposed rule and request for comment that it might impose a restriction on clock hour programs based on § 1099c-1(e), as noted above. Thus, institutions like Cortiva or Bellus Academy did not have the opportunity to comment

on the Department's proposed imposing a restriction on clock hour programs. Thus, the Bare Minimum Rule violates the logical outgrowth doctrine.

B. Absent an Injunction, Plaintiffs Will Suffer Irreparable Injury

Plaintiffs are entitled to an injunction because they will suffer actual injury if the Court chooses not to issue a preliminary injunction. Students who enroll in Cortiva's PMT program on or after July 1, 2024, will lose access to Pell Grants, which do not need to be repaid, and instead will have to incur Direct Loans, which accrue interest at 5.5%. Ex. A (Heller Decl.) ¶¶ 26–27. Cortiva also will be required to cut hours from instrumental courses such as anatomy and physiology, professional ethics and business, and massage techniques education from clinical assessment and therapies and allied modalities. Ex. F (Black Decl.) ¶ 9. Finally, Cortiva has *already* lost access to G.I. Bill benefits and other veterans' education benefits as a result of the Bare Minimum Rule. Ex. G (Lezcano Decl.) ¶¶ 8–15. The Bare Minimum Rule has thus already harmed Cortiva and will "threaten[] the very existence of [Cortiva's] business." *Wisconsin Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985). Cortiva will likely need either to discontinue its PMT Program, which is its largest program, or to shut its doors in Arlington altogether if the Bare Minimum Rule goes into effect. This threatens both students' ability to obtain gainful employment and the interests of businesses in Texas that would otherwise hire Cortiva's students.

Still other schools such as Bellus Academy will be required to eliminate some of its programs completely, lose the opportunity for international certification for its students, including military spouses who work abroad serving the U.S., and will be left with "incredibly difficult choices to make for [its] students, staff, and operations if the Final Rule becomes effective on July 1, 2024." Ex. B (Lynch Decl.) ¶¶ 9–11, 21. Bellus Academy's staff already has spent approximately 445 hours in attempting to receive approvals for its programs to comply with the Final Rule and in preparing its catalogs, course materials, and curricula to comply with the Bare

Minimum Rule. *See id.* ¶ 20. The nonrecoverable costs alone of "complying with a putatively invalid regulation typically constitute irreparable harm." *Rest. L. Ctr. v. United States Dep't of Lab.*, 66 F.4th 593, 597 (5th Cir. 2023); *see also Louisiana v. Biden*, 55 F.4th 1017, 1034 (5th Cir. 2022). The focus is on the irreparability of the injury, not the magnitude. *See Texas v. EPA*, 829 F.3d 405, 433–34 (5th Cir. 2016) (The key inquiry is "not so much the magnitude but the irreparability."). Even purely economic costs are irreparable when "they cannot be recovered in the ordinary course of litigation." *Id.* at 343 & n.41.

C. The Balance of the Equities and Public Interest Favor an Injunction

The balance of the equities and public interest merge here against the United States to favor issuing a preliminary injunction, since "the public is served when the law is followed." *Daniels Health Scis.*, 710 F.3d at 585.

Moreover, Plaintiffs have tried since October 31, 2023, to resolve issues concerning the Bare Minimum Rule with the Department and were promised long-awaited guidance that only confirmed the Department cannot evenhandedly enforce the Bare Minimum Rule on July 1, 2024, when it becomes effective. The Department issued the April 9, 2024 Updates on New Regulatory Provisions Related to Certification Procedures and Ability-to-Benefit, which states:

> [I]nstitutions have expressed concern about their ability to seek and obtain approval from accrediting agencies and States to change the lengths of their GE programs in time to come into compliance with the regulations. Institutions have also expressed concern about their ability to determine the specific requirements for licensure in the States in which they operate and, in some cases, limit the States in which they operate in order to comply with requirements for programs to meet licensure and certification requirements in all States where an institution enrolls students. The Department has also heard concerns from State agencies about their ability to approve a substantial number of program changes in time for their institutions to be in compliance. Additionally, we are aware of challenges that institutions have experienced regarding access to and use of certain Department systems.
>
> The Department understands that there may be circumstances outside of an institution's control that prevent compliance with these new requirements

> by July 1, 2024. However, the Department believes that most of those concerns and challenges will have been resolved or sufficiently mitigated by January 1, 2025. The Department has enforcement discretion with respect to an institution's compliance with certain Title IV, HEA requirements. Given the concerns received from institutions and States, particularly for the period between July 1, 2024 and January 1, 2025, we will consider exercising this discretion before taking action regarding the provisions in 34 CFR 668.14(b)(26) and 34 CFR 668.14(b)(32).

GEN-24-03, n.9 *supra*. The Department knows schools cannot comply with the Bare Minimum Rule due to circumstances out of their control. Without further explanation, the Department picks an arbitrary date of January 1, 2025, and says it will "consider exercising" its enforcement discretion until then. Schools like Cortiva and coalition members remain at the whim and mercy of bureaucratic discretion. That is not adequate relief, but it shows that even the Department recognizes that interim relief is necessary.

Further, the balance of the equities favors the *status quo*; preliminary relief will prevent irreparable harm, without harming the Government, while the Court considers the lawfulness of the Department's attempt to change the *status quo*. *See Nken*, 556 U.S. at 429.

D. The Bond Requirement Should Be Waived

The security requirement in Rule 65(c) is not appropriate in all cases, and the Court may waive it. *See, e.g.*, *Kaepa, Inc. v. Achilles Corp.*, 76 F.3d 624, 628 (5th Cir. 1996). This Court has found that, where there is no evidence that a defendant will suffer financial loss, there is no need to post security. *See Greer's Ranch Cafe v. Guzman*, 540 F. Supp. 3d 638, 652 (N.D. Tex. 2021).

II. The Court Should Alternatively Delay the Effective Date of the Bare Minimum Rule under 5 U.S.C. § 705

The Court should issue preliminary injunctive relief to prevent the Department from enforcing the Bare Minimum Rule. But if the Court does not, then it should, at a minimum, stay the Bare Minimum Rule's Effective Date until this Court and the Fifth Circuit have the opportunity to determine whether the rule is unlawful. 5 U.S.C. § 705 authorizes courts reviewing final rules

to "issue all necessary and appropriate process to postpone the effective date of an agency action or to preserve status or rights pending conclusion of the review proceedings." The Fifth Circuit has endorsed a district court's staying a rule's effective date under § 705 as an alternate remedy to issuing a preliminary injunction. *See All. for Hippocratic Med. v. U.S. Food & Drug Admin.*, 78 F.4th 210, 254 (5th Cir.) (holding that a stay under § 705 is "an appropriate form of relief" because it is a "temporary form of vacatur" allowed under the APA);[18] *see also Texas v. EPA*, 829 F.3d at 435 (staying a final rule in its entirety pending the outcome of the petition for review). To give adequate time for this review, Plaintiffs request the Court to stay the effective date while the lawsuit is pending.

CONCLUSION

The Court should grant Plaintiffs' Motion and preliminarily enjoin and enter a temporary restraining order preventing the Department from enforcing the Bare Minimum Rule. In the alternative, the Court should stay the effective date of the rule while the lawsuit is pending.

[18] *Cert. granted sub nom. Food & Drug Admin. v. All. for Hippocratic Med.*, 144 S. Ct. 537, 217 L. Ed. 2d 285 (2023), *and cert. granted sub nom. Danco Lab'ys, L.L.C. v. All. for Hippocratic Med.*, 144 S. Ct. 537, 217 L. Ed. 2d 285 (2023), *and cert. denied sub nom. All. for Hippocratic Med. v. Food & Drug Admin.*, 144 S. Ct. 537, 217 L. Ed. 2d 285 (2023).

Dated: May 31, 2024

Respectfully submitted,

/s/ Melissa Hensley

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CERTIFICATE OF CONFERENCE

On May 30, 2024, Plaintiffs' counsel conferred by email with Kathryn L. Wyer, Senior Trial Counsel at the U.S. Department of Justice, Civil Division, Federal Programs Branch; informed her of Plaintiffs' intention to file this lawsuit and motion; and asked to confer on the position of the United States. Ms. Wyer is counsel for defendants in *American Association of Cosmetology Schools, et al. v. United States Department of Education, et al.*, No. 4:23-1267 (N.D. Tex.) and *Ogle School Management, LLC, et al. v. U.S. Department of Education, et al.,* No. 4:24-259-O. Ms. Wyer has not responded, but Plaintiffs expect that the United States will oppose the motion, have conveyed that expectation to Ms. Wyer, and have asked her to notify counsel if that expectation was not correct. Undersigned counsel will provide a courtesy copy of this motion to Ms. Wyer via email upon filing.

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CERTIFICATE OF SERVICE

I hereby certify that on May 31, 2024 I caused the foregoing to be filed with the Clerk of the U.S. District Court for the Northern District of Texas using the Court's CM/ECF system, which will electronically serve copies of the same on counsel for all parties. A courtesy copy will also be sent by e-mail to Kathryn L. Wyer, Senior Trial Counsel at the U.S. Department of Justice, Civil Division, Federal Programs Branch.

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Exhibit A

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

360 DEGREE EDUCATION, LLC, d/b/a Cortiva Institute; and THE COALITION FOR CAREER SCHOOLS, Plaintiffs, Plaintiffs, v. DEPARTMENT OF EDUCATION; and SECRETARY MIGUEL A. CARDONA, in his official capacity as Secretary of the Department of Education, Defendants.	Case No. _____ **Declaration of Neal Heller**

I, Neal Heller, do hereby declare and state as follows:

BACKGROUND

1. I make this declaration in support of 360 Degree Education, LLC d/b/a Cortiva Institute ("Cortiva")'s Motion for Preliminary Injunction and Temporary Restraining Order. This declaration is based on my personal knowledge, and I could and would competently testify to its contents if called to do so.

2. I am the Chief Executive Officer ("CEO") and President of Cortiva, which has a campus located in Arlington, Texas, at 808 West Interstate 20, Suite 100, Arlington, Texas 76017. I began working at Cortiva in 2019 and have worked in career education and the proprietary sector for approximately 28 years.

3. Given my position as Cortiva's CEO and President, I am familiar with the massage therapy industry generally and with Cortiva's programs and students specifically.

CORTIVA INSTITUTE

4. Cortiva provides programs to train massage therapists, estheticians, cosmetologists, and nail specialists, among other programs. Cortiva's purpose is to transform students into the best versions of themselves, and its programs are designed to provide students with exceptional learning experiences to empower them to become licensed practitioners in the health, beauty, and wellness industries.

5. Today, the Cortiva brand of schools has seven campuses located in Connecticut, Maryland, Pennsylvania, Florida, and Texas. Cortiva is a market leader that graduates approximately 1,000 students nationally each year with approximately 100 of those graduating from Cortiva's Arlington campus; those individuals then go on to serve their respective communities.

6. Cortiva and its programs are licensed by the Texas Department of Licensure and Regulation, which specifies course curriculum and minimum hours needed for licensure.

7. Cortiva's Arlington campus is accredited by the Accrediting Commission of Career Schools and Colleges ("ACCSC"), which the Department has classified as an independent accrediting agency, meaning it is "recognized by the Secretary [of Education] as [a] reliable authorit[y] concerning the quality of education or training offered by the institutions of higher education or higher education programs they accredit." Dep't of Educ., Accreditation in the United States (last modified Apr. 10, 2024), https://www2.ed.gov/admins/finaid/accred/accreditation_pg3.html#RegionalInstitutional.

8. The Department of Education recognizes Cortiva as an eligible institution for purposes of the student aid programs administered under Title IV of the Higher Education Act ("HEA"). That recognition reflects the Department's understanding that Cortiva provides at least

one eligible program of training to prepare students for gainful employment in a recognized occupation.

9. When last accredited by ACCSC in 2020, Cortiva's professional massage therapy ("PMT") Program was approved to provide a 24 credit-hour program, which converts to 600 instructional clock hours.

10. The majority of Cortiva's Arlington campus students use Title IV aid to fund their education. And of the 65 active students in its PMT Program, 84.6% receive Pell Grants.

11. Cortiva's student body is demographically and economically diverse. According to the College Navigator website, 72% of Cortiva's student body is female. In addition, 64% of the student body is Black or African American, and 19% is Hispanic/Latino.

12. Cortiva's Arlington campus is eligible for Pell Grants because it currently meets the criteria for Pell Grants as it contains at least 600 clock hours of training.

13. Upon graduation from Cortiva, the median and average amount of student debt is $7,577.00 for students, which translates into a roughly $90 monthly payment when amortized over a 10-year period.

14. This relatively low debt burden provides Cortiva graduates with the flexibility to tailor their career paths to fit their personal ambitions. Although some Cortiva students seek to enter the massage therapy industry as their full-time occupation, other students have different goals. For instance, some graduates choose to work only part-time in the massage therapy industry to accommodate family obligations or other responsibilities. Other graduates may choose to leave the work force altogether for similar reasons. Still other students choose to start massage therapy businesses of their own.

15. Despite these varying paths, Cortiva's graduates default on their student loans relatively infrequently. The U.S. Department of Education has never declared Cortiva ineligible to participate in Title IV programs because of its "cohort default rates," since Cortiva's rates are always well below the levels that Congress has deemed unreasonable. *See* 20 U.S.C. §1085(a)(2)(A), (B)(iv), (m)(1).

16. This indicates that the great majority of Cortiva graduates have sufficient funds to pay down their student loans. However, Cortiva does not know how many of its graduates report all of their earnings to the federal government, as Cortiva does not prepare its graduates' tax returns. But it is well-recognized that, as a general matter, the massage therapy industry continues to suffer from underreported earnings by workers, many of whom transact business in cash, accept cash tips, and operate their own businesses.

17. Cortiva's Arlington campus also has twenty total employees, including twelve instructors. Nationally, Cortiva has 136 employees with seventy-six instructors.

THE BARE MINIMUM RULE

18. In my role at Cortiva, I have developed a keen understanding of the issues and implications of the U.S. Department of Education (the "Department")'s October 31, 2023 final rule regarding changes to the administration of loans under Title IV of the HEA. *See* 88 Fed. Reg. 74,568 (October 31, 2023) (the "Bare Minimum Rule").

19. I am especially familiar with the Bare Minimum Rule's provisions and how they have harmed, continue to harm, and will substantially threaten further harm to Cortiva as well as its staff, students, and the communities they serve both before and after the Bare Minimum Rule takes effect on July 1, 2024.

20. On account of its participation in the Department's Title IV, HEA program, Cortiva is subject to the Bare Minimum Rule's provisions and requirements.

21. The majority of students enrolled at Cortiva's Arlington campus will be affected by the Bare Minimum Rule because they currently are eligible for and use Pell Grants to cover the costs of their education. On July 1, 2024, new students who wish to enroll for the first time in Cortiva's PMT Program will no longer be eligible for Pell Grants once the Bare Minimum Rule takes effect because Cortiva will not be able to provide its current program that is eligible for Pell Grants.

22. Cortiva fully supports carefully considered and thoughtful regulations that preserve and equally protect the rights of students and the schools that educate them; however, the Bare Minimum Rule does not exhibit those qualities and, in fact, has and will substantially threaten the viability of not only Cortiva, but career education schools across the country.

LONG-TERM HARM TO CORTIVA AND ITS STUDENTS

23. As a result of the Bare Minimum Rule's changes to Title IV, HEA, the Bare Minimum Rule prevents new students who seek to enroll in the PMT Program from accessing Pell Grants on July 1, 2024.

24. Cortiva enrolls new students in the PMT Program on July 1, 2024, the same day when the Bare Minimum Rule takes effect.

25. The effects of the Bare Minimum Rule are imminent. New students who enroll on July 1, 2024, will no longer qualify for Pell Grants as expressly acknowledged in the U.S. Department of Education's April 15, 2024 Dear Colleague Letter. *See* Ex. B (Dear Colleague Letter GEN-24-06: Implementation of Program Length Restrictions for Gainful Employment (GE) Programs, https://fsapartners.ed.gov/knowledge-center/library/dear-colleague-letters/2024-04-

15/implementation-program-length-restrictions-gainful-employment-ge-programs) at 2 ("Programs that admit students without the equivalent of an associate degree and that include less than 600 clock hours, 16 semester hours, or 24 quarter hours will no longer be eligible to participate in the Federal Pell Grant and Campus-based programs.").

26. Although prospective students who seek to enroll in the PMT Program may still take out a Direct Loan, the current interest rate for Direct Loans is 5.5%. Approximately 84.6% of current students receive Pell Grants and would likely not enroll if they had to take out a Direct Loan.

27. The anticipated lack of enrollment may cause Cortiva to ultimately close its PMT Program.

28. I am involved in decisions concerning growth and strategic planning, including decisions about ways in which to meet or respond to changes in employer demand for career education and new programming. These decisions include whether to open campuses in new geographic regions, close or consolidate campuses and facilities, transfer students to improved or upgraded facilities, and expand or modify certain program offerings in accordance with student needs and convenience.

29. If Cortiva ultimately has to close, prospective students looking to increase their income potential and prospective employers of those students will suffer as a result of the Bare Minimum Rule and will have more limited opportunities than they had previously.

PREPARATORY EFFORTS AND ONGOING HARM

30. Cortiva has three staff directly responsible for monitoring regulations and ensuring its schools' compliance with federal and state regulations, as well as an additional nine employees

who directly monitor all Title IV documentation for compliance and work with a third-party servicer to review documentation.

31. In anticipation of the Bare Minimum Rule's July 1, 2024 effective date, Cortiva has already undertaken and continues to undertake significant efforts to comply with the Rule's requirements and to, as best as possible, prepare for the anticipated harms that will result from the changes to the Title IV, HEA program. Cortiva has expended significant time and effort preparing and training staff to comply with the new regulations. These preparations include:

a. Training Cortiva staff on the Bare Minimum Rule's requirements;

b. Reviewing recruitment and advertising materials and training recruiting, admissions, financial aid, and student records staffs;

c. Rewriting financial aid materials to reflect changes made by the Bare Minimum Rule;

d. Rewriting Cortiva's curriculum and deciding which classes to no longer offer to comply with the Bare Minimum Rule's requirements;

e. Expending resources to contact State officials at the Texas Department of Licensing and Regulation and its accreditor, ACCSC, to ensure compliance with those entities' requirements;

f. Ensuring a considered and thorough legal review of proposed communications with potential students.

32. Cortiva employs ten staff members who are responsible for monitoring and complying with financial aid requirements. These staff members are currently being trained and will continue to need further training regarding the Bare Minimum Rule's provisions and requirements.

33. Cortiva also employs thirteen staff members who are responsible for new student engagement, advertising of the school's educational programs, and preparing marketing materials. These staff members are being and will need to be constantly trained regarding Bare Minimum Rule's provisions and requirements.

34. I expect Cortiva's costs and burdens associated with the aforementioned activities will only increase further with incredible urgency if the Bare Minimum Rule is permitted to go into effect.

35. I have no reason to doubt that Cortiva's compliance costs will meaningfully deviate from the Department's estimate.

36. It is my understanding that, because the defendants in this action enjoy sovereign immunity, Cortiva is unable recover these compliance costs once incurred.

AUTHENTICATION OF DOCUMENTS

37. Attached as Exhibit A is a true and accurate copy of the comment I submitted on behalf of the Hollywood and Cortiva Institutes on June 19, 2023.

38. Attached as Exhibit B is a true and accurate copy of the U.S. Department of Education's April 15, 2024, Dear Colleague Letter GEN-24-06: Implementation of Program Length Restrictions for Gainful Employment (GE) Programs.

Per 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this 31st day of May, 2024.

DocuSigned by:
Neal Heller
C1D9517F929E42D...

Neal Heller

Exhibit A

Hollywood and Cortiva Institutes

2001 W. Sample Rd., Suite 318

Pompano Beach Fl. 33064

VIA REGULATIONS.GOV

June 19, 2023

The Honorable Miguel Cardona
Secretary
U.S. Department of Education
400 Maryland Ave. S.W.
Washington, D.C. 20202

Re: Docket ID ED-2023-OPE-0089

Dear Secretary Cardona:

Thank you for the opportunity to comment, today, on the package of proposed rule changes regarding Certification Procedures, Financial Value and Gainful Employment ("GE"). Financial Responsibility, Administrative Capability and Ability to Benefit ("ATB"), hereinafter referred to as the "Rule", which were the result of the Notice of Proposed Rulemaking ("2023 NPRM"), published by the Department of Education (the Department") on May 19, 2023.

I am the Owner, CEO and President of 11 beauty and wellness (cosmetology and massage) schools in various geographic regions across the United States. I own and operate Hollywood Institute of Beauty ("Hollywood Institute"), in three locations in Florida - Casselberry, Hollywood and West Palm Beach. Hollywood Institute ("Hollywood Institute"), which I also own and operate, is located in Margate, Florida. There are seven Cortiva Institutes which I own and operate, of which three are in Florida - Pompano Beach, Maitland and St. Petersburg. The other 4 Cortiva Institutes, which I own and serve as CEO and President, are located in Arlington (TX), Baltimore (MD), King of Prussia (PA), and Cromwell (CT).

I have been the owner, CEO and President of the four Hollywood Institutes for 14 years, and the owner, CEO and President of Cortiva Institutes for four years. I am an active member in FACTS (the Florida Association of Cosmetology and Technical Schools) and AACS (the American Association of Cosmetology Schools).

Student enrollment, at all 11 campuses in 2022 averaged to be 1800. Of these enrolled students, approximately 70% accessed Title IV federal funds to pay for their education.

I cannot emphasize enough the impact that the Rule will have on my schools, and more importantly, our students if it were to be enacted in its current form. Just based on the reduction of the "150% Rule" to 100% of state minimums will cause both our Massage Therapy and Full Specialist programs at all four Hollywood Institutes in Florida to lose Title IV funding.

The Cortiva Institutes in Florida generate a substantial portion of their revenue from massage therapy programs. These programs at all three locations in Florida will lose eligibility for Title IV participation.

Yet, ironically, the other four Cortiva Institutes in TX, MD, PA and CT, all of which focus on providing massage therapy programs, will NOT lose their Title IV eligibility because of the disparity between the state minimums.

It is puzzling to me that the Department can even entertain a Rule which will have such disparate consequences across various states. A student at my Cortiva Institute in Arlington, TX can access Title IV federal financial aid to attend the same program which will now be unavailable, if this Rule is adopted, to a Cortiva Institute student in Pompano Beach.

Please accept this submission as my public comment, on behalf of the 11 cosmetology schools which I own, operate and represent, here, its students, educators, allied businesses and consumers regarding the proposed amendments to Certification Procedures, Financial Value and Gainful Employment ("GE"), Financial Responsibility, Administrative Capability, and Ability to Benefit ("ATB"), as is advanced in the Rule.

Certification Procedures

§668.14(b)(26) (150% Rule /proposed at 100%)

The proposed edits to §668.14(b)(26) will **seriously affect** (if not debilitate) the viability of the four Hollywood Institute schools which I own in Florida as well as the three Cortiva Institutes which I own in Florida. All seven of those schools, in Florida, will lose eligibility for Title IV financial aid for their respective Massage Therapy and/or Full Specialist programs, when the Rule is amended from 150% of state minimums to 100%.

The state of Florida is one of the few states which requires the lowest amount of clock hours for cosmetology, skin, barbering and massage programs in the United States. The state minimum for Massage Therapy is 500 hours. The state minimum for Full Specialist (nails and skin) is 400 hours.

Both the Cortiva Institutes and Hollywood Institutes, seven in total, rely on the 150% Rule to qualify their Massage and Full Specialist programs for Title IV aid and Pell Grants. At 150% of Florida state minimum, the Massage Therapy program qualifies for Title IV aid and Pell Grants. At 150% of the Florida state minimum, the Full Specialist programs qualify for Title IV aid and Pell Grants. I do not **take advantage** of the 150% rule, but **"teach up to it"**; I offer a 600 hour program (20% above state minimums) for Massage and 600 hour program for Full Specialist (25% above state minimums). At 600 hours, the Massage and Full Specialist enrollees can access Title IV student loans and Pell Grants.

If §668.14(b)(26) is allowed to stand, **all** Massage and Full Specialist programs in Florida will no longer be Title IV eligible – not just Hollywood Institutes and Cortiva Institutes. Students are not in a position to pay cash for 400 and 500 hour programs. The proposed rule will **quash these two programs, in Florida, entirely**. It will **compromise the financial viability** of all Florida schools who offer these programs and cause **shortages in the industries** in Florida who hire graduates of these programs.

I have personally attended legislative sessions in Tallahassee with Mez Varol, the President of FACTS. I agree with him that, on the forefront of each participating legislator's mind was, "will this reduction in hours **cause** potential students **to lose** Title IV financial aid?" Florida state legislators **relied on the 150% Rule** when electing to reduce state minimums. These reductions, in Florida state minimums, **would not have been undertaken** by the Florida state legislature if the Title IV money for these programs was going to be affected.

Amending §668.14(b)(26), as proposed, does not result in a uniform application across all 50 states, given that the states, themselves, set the minimums. It is inequitable, discriminatory, and unconscionable that a Cortiva Institute massage student in Baltimore (where the state minimum is 750 hours) qualifies for Title IV funds, but a similarly situated student in Florida does not. The 50% "cushion", which is built into the unamended rule **provides latitude** for a school in a state with **restrictive minimums** to teach "up to" the requisite 600 hours to qualify for financial aid. That was, as I understand it, **the purpose of the 50% cushion – to equal the "playing field"**. Now, the Department is attempting to eliminate that.

I recommend that the Department eliminate its proposed edits to §668.14(b)(26). As proposed, the rule when applied is **arbitrary** and **capricious.**

I recommend that the "adjacent state" rule be retained intact, unamended. The "alternate state" rule, as proposed in the NPRM, is even more restrictive and impossible to access than the now existing "adjacent state" rule. And, that rule was almost impossible to apply. There is no rationale provided by the Department for these new restrictions. The intent of the existing rule was mobility – to ensure a graduating student completed enough clock hours to be "gainfully employed" in that adjacent state. Now, and without rationale being provided, that latitude to relocate is eliminated. New, unrelated thresholds must be met **AND** certified by an auditor. Are

these new impositions based on data and findings of abuse under the existing rule, or merely **arbitrary** and **capricious**?

The Adjacent State Rule, as written, should stand. At a minimum, it may help schools in Florida compensate for the 150% rule being reduced to 100% of minimum state hours. It meets the Department's stated purpose. The proposed rule goes beyond the scope of the Department's authority, **is not supported by Congressional authority** is arbitrary and capricious.

§668.13 – Renewal of Certification.

In its revision of §668.13, the Department eliminates the provision that, if the Department does not "make a determination to grant or deny certification within 12 months of the expiration of [an institution's] current period of participation, the institution will automatically be granted renewal of certification, which may be provisional." 88 Fed. Reg. 32491 (May 19, 2023).

I urge the Department to **maintain the current regulation**. The Department **should** promptly process applications, provide timely feedback to institutions, properly oversee institutions, and provide timely remedies for deficiencies identified. The Department expects timely responses from institutions. Why should there be a double standard? Institutions should not be "kept waiting" for indefinite periods of time.

In addition, the Department proposes a plethora of "supplementary performance measures" that it will take into consideration when assessing whether or not to certify or condition the Title IV participation of an institution. The Department's justification for these new factors, is that "[c]odifying these supplemental performance measures would also provide additional clarity and transparency to institutions regarding the types of information the Department will likely consider when making certification decisions." 88 Fed. Reg. 32379 (May 19, 2023).

I disagree with the Department's proposal as to these supplementary performance measures, published at §668.13I. The inclusion of these supplementary performance measures **is inconsistent with the Department's statutory authority** under 20 U.S. Code §1099c(b). That Code permits the Department to require institutions to provide "sufficient information and documentation to determine that the requirements of eligibility, accreditation, financial responsibility, and administrative capability" are met. Measures inconsistent with or exceeding this authority (reporting debt-to-earnings, earnings premium, and educational and pre-enrollment expenditures) should be eliminated.

§668.14 - Program Participation Agreement

The proposed rule at §668.14 requires that several significant procedural and content changes be made to an institution's program participation agreement (PPA).

I recommend that the Department **eliminate** the co-signature requirement proposed in § 668.14(a)(3)(ii). The requirement is inconsistent with and **exceeds the Department's statutory authority** to require financial guarantees from owners, as stated in HEA Section 498. The Secretary has the authority to require financial guarantees from **the institution and individuals who exercise substantial control**. That authority does not extend to an entity.

§ 668.14(b)(32)(ii) – Educational Prerequisites

As proposed, **an institution** (not the student) must determine that a program satisfies the applicable educational prerequisites for professional licensure or certification requirements **in the State where the student is enrolled** (not the state which the student elects).

I support the elimination of these proposed edits and reversion back to the original language. This proposal **unfairly limits student choices**.

§ 668.14(b)(32)(iii) – State Authorization Reciprocity Agreements

I recommend that the Department eliminate its proposed edits, here, which compromises State authority. It is the States who have purview over the operations of higher education institutions. The contents of such reciprocity agreements, including applicable consumer protection laws, should be left to those States.

Financial Value and Gainful Employment ("GE")

As an owner and operator of eleven cosmetology and wellness schools, which will be significantly and perhaps devastatingly impacted by this subsection of the Rule, I believe that I was not afforded sufficient time to comment. The Rule is cumbersome, the calculations are intricate, the research and data cited by the Department is lengthy, and impact of the proposed rule on institutions, their students and their affiliates **is projected to be unprecedented**.

Be reminded that our schools will lose Title IV eligibility for **11** programs at the seven schools which I own and operate in Florida because of the now proposed "100% Rule". But, if by some miracle, those programs survive a Rule challenge, and survive under the proposed GE Rule, the residual effects on my institution's **financial solvency** will be substantial. The administrative burden placed on my administration for eleven schools will be **monumental**. Most of my schools offer one, if not two programs. For proprietary institutions, like mine, with only one or two programs, the proposed GE Rule **could result in the closure of one or more of my schools**. If one program fails the GE metric, and it is one of one or two programs being offered, the school cannot survive. The American Association of Cosmetology Schools ("AACS"), in an impromptu survey of its member schools in the beauty and wellness industry, determined that **41% of cosmetology programs** will fail measure, lose Title IV eligibility and **likely shut down**.

I am told that "cosmetology schools" are mentioned, by sector, over 40 times in the proposed Rule. Are we being targeted because of past bad acts of huge proprietary institutions who mislead thousands of students? Understand that many students who attend Hollywood Institutes and Cortiva Institutes graduated from "non-traditional" high schools –

some were educated in the prison system while others attended an alternative high school. These students are looking to learn a creative trade with a moderate amount of theory courses educating the creative and artistic techniques of that trade. A barber student is not going to convert his/her education to pursue becoming an aviation technician. That student chose the cosmetology/wellness school because it complements the level of education in which that student can succeed. The Department appears to overlook the core values provided by cosmetology/wellness schools to the "challenged" student sector.

It is unfathomable, yet predictable, that **no representative** from either a cosmetology school or a small proprietary school (under 450 students) was included on the Institutional and Programmatic Eligibility Committee which negotiated Financial Value and GE. In fact, my name was submitted by the American Association of Cosmetology Schools ("AACS") as a potential negotiator for that committee. The Department **elected** to not include me. Then, a fellow Florida school owner, Michael Halmon, was nominated by Brad Adams (negotiator for proprietary postsecondary schools) from the floor to represent small proprietary school with under 450 students. That nomination was defeated by a vote of 8 – 6, with the federal negotiator (representing the Department) voting "thumbs down". With issues like the 150% rule, 90/10 and GE "on the table", why did the Department twice refuse to seat a cosmetology/small proprietary school owner on the committee?

I agree with FACTS that the Department failed to comply with the statutory rulemaking requirements as to the **composition of the rulemaking committee**. That committee must reflect "the diversity in the industry, representing both **large and small** participants, as well as individuals serving local areas and national markets." 20 U.S.C. §1098a(b)(1); National Educ. Ass'n v. Devos, 379 F. Supp. 3d 1001, 1008 (N.D. Cal. 2019).

At least one negotiator was needed (and should have been included) for the small school sector (under 450 students) to have adequate representation. The lack of inclusion of at least one spokesperson representing small institutions of higher education on a committee of 15 charged with negotiating revisions to the critically important 150% Rule, GE Rule and 90/10 Rule (which passed by consensus) fell short of any composition reflecting the diversity of the proprietary sector. I contend that all components of the proposed rule discussed by the wrongfully composed Programmatic Eligibility Committee be removed and renegotiated.

Similarly, the Programmatic Eligibility Committee, which negotiated GE and the 150% Rule, **lacked the expertise** required by statute. The negotiated rulemaking statute requires the Committee to select "individuals with demonstrated expertise or experience in the relevant subjects under negotiation," and the Department's published protocol. (Negotiated Rulemaking Committee; Negotiator Nominations and Schedule of Committee Meetings, 86 Fed. Reg. at page 69607 (December 21, 2021). That did not happen, here.

The overwhelming **majority of committee** members (eight in fact) represented interest groups **other than institutions of higher education** that are not subject to GE. Those members, by definition, **lacked any "demonstrated expertise or experience in the relevant topics**." For

that reason, I argue that all components of the proposed rule discussed by the Programmatic Eligibility Committee be removed and renegotiated.

It is customary for GE to be **the entire focus** of a NPRM. The record confirms that seven days and a total of 51 hours were dedicated to negotiating GE in 2014. In 2017, 72 hours of negotiations over the course of nine days were devoted to GE, before the rule was rescinded.

This time around, **only a few hours** over the course of **two days** were devoted to discussing the Department's "issue paper" and proposed language. The Department's negotiator recognized these time constraints.

Here's my "take" - the abbreviated time for negotiation **is the reason** that **all six institutional representatives** voted against the Department's proposal. Yet, the Department is advancing the new GE **despite unified opposition** from those **negotiators representing institutions** and the **most abbreviated time for negotiations** in the history of GE.

I believe that abbreviate time for scheduling GE discussions within the Committee failed to meet the statutory requirement that the sessions "provide for a **comprehensive discussion and exchange of information**." 11 20 U.S.C. § 1098a(a)(1)-(2). The federal negotiator, Greg Martin, acknowledged "less time" devoted to GE and "time constraints". See transcript: Greg Martin, Federal Negotiator, Session 2, Day 2, Morning, Feb. 15, 2022, Institutional and Programmatic Eligibility Negotiated Rulemaking. Arguably, a few hours over the course of a few days **was not sufficient** to yield a comprehensive discussion or exchange of information. For this reason, I contend that **the lack of consensus** which served as the **predicate** for the Department's GE compilation of the proposed rule is **arguably invalid** and the proposed final rules should therefore be rejected.

I note that the Department allowed itself **425 days** to write and publish its proposed rule after negotiated rulemaking concluded. Yet, public commentors, including school owners like me, were allowed only thirty days to digest and comment on the 1077 proposed rule and supporting data. This is not in keeping with the intent of the Administrative Procedures Act ("APA"); the public comment period should be reopened to allow for supplemental comments.

The Department is now proposing to calculate and disclose Debt to Earnings ("D/E") rates and a new "earnings premium" for every program at every Title IV institution. While Title IV eligibility determinations would apply only to GE programs (non-degree Title IV programs offered by public and private non-profit institutions and all Title IV programs offered by proprietary institutions), the calculation will be done **for every program.**

The Department **lacks authority over ineligible programs**. The regulation, as published, violates the prohibition against Federal control of education. The published regulation seeks to impose conditions and restrictions on non-Title IV programs offered by eligible institutions. This is **prohibited** by the ED's general authorizing statute, is irreconcilable with the HEA and should be striken.

And, now a new "earnings premium" ("EP") test has been introduced, as if GE was not enough. EP will be calculated in addition to the D/E metric to determine whether a GE program should remain Title IV eligible. Simply stated, if the median earnings of a program's graduates fail to consistently exceed the median earnings of high school graduates, that program fails the EP test. I find the EP test problematic, unnecessary and overbearing. Cosmetology and wellness schools offer **short-term,** lower cost programs that produce **graduates who are known to underreport wages**.

The **EP test is flawed** and **should be eliminated**. It fails to consider "flex" work, part-time employment, self-employment, seasonal employment (relevant in Florida) and under-reporting of income.

The Department intends to rely on other federal agencies (probably the IRS) to collect financial earnings data, on which the EP test will be calculated. If the income isn't reported and **no** adjustments are made for that, **the resulting data will be flawed**. If part-time income (flex work) is reported yet considered as full-time employment, the resulting data will be **flawed.**

I recommend that, rather than impose sanctions based on flawed data, the Department rely exclusively on **consumer disclosures**. Reliable data to use to project and assess program outcomes **has not yet been identified**. Until then, disclosures provide a viable alternative.

Congress did not expressly authorize the Department to promulgate a **retroactive** regulation. I oppose the Department's intent to make program eligibility determinations based on "aged" data from years that precede the effective date of the rule. It is unconscionable and fundamentally unfair (and likely unlawful) to sanction institutions based on program and pricing decisions that were made many years prior to the effective date of the law. Those decisions cannot be revisited, adjusted, reversed, or impacted in any way. That equates to retroactivity, which was not expressly authorized. D/E rates and EP calculations using data from the years preceding the rule's effective date should be for **informational purposes only.**

No "transitional metric" for GE programs was adopted by the Department in this recent amending of the Rule. And, it should have been.

If not a transition metric, then the Department should consider **"capping**" the maximum number of programs to be deemed ineligible at an institution and then allowing for **an alternate earnings appeal**. As the Rule is written, an institution **can do nothing** to impact its D/E rate or EP metric **for the first five award years**. Rather than improving transparency, which is the objective here, it is arguably punitive that an institution that improves its D/E or EP in 2024 **will see no improvement in those metrics until 2030.**

I object to the Department holding institutions accountable for earnings data generated during calendar years 2020 and 2021, when the COVID-19 pandemic was at its height of impact. Schools were closed. Licensing agencies were closed. Retail opportunities for employment were non-existent. The Department is being insensitive to the devastation to institutions in general, and the cosmetology sector specifically if it makes, publishes, and sanctions institutions based on determinations that rely on earnings data from 2020 and 2021. And yet, this is what is proposed,

here.

The Department proposes to calculate each program's D/E rates based on earnings information it intends to obtain from institutions, the agency's systems, and a TBD Federal agency. The Department's preference is the Internal Revenue Service. See 88 Fed. Reg. 32328 (May 19, 2023).

I argue that SSA data is flawed as it relates to the cosmetology and wellness industry and should not be used as a basis for calculating D/E or EP. As I mentioned earlier, it does not account for individuals who elect to work **part time**; nor does it account for "**cash**" income or income received as **tips**. The Department relied on SSA data when promulgating the 2014 GE rule. The Court agreed with that "flawed data" argument in American Association of Cosmetology Sch. v. Devos. (258 F. Supp. 3d at 73). There, the Court recognized the underreporting of income and cash income in the cosmetology and wellness industry, to hold that "although SSA data is highly accurate in some respects and is thus a useful starting point for determining average earnings, it has significant shortcomings—at least for certain occupations."

I believe that using the D/E calculation, as proposed, fails to meet the Department's objectives to (1) disclose accurate student outcomes and (2) measuring the overall quality of programs. In 2019, the Department recognized the disconnect between D/E calculations and the measurement of program quality, stating that the "D/E rates measure is an **inaccurate** and **unreliable proxy** for program quality[.]" 84 Fed. Reg. 31392 (July 1, 2019). (emphasis added).

Arguable, the D/E measurement, as proposed, does not assess the financial value of a program over a graduate's lifetime. The Department acknowledges this, by saying it "agrees that D/E rates, based on earnings in the third and fourth year following completion of a program, do not accurately predict how much a graduate will earn over a lifetime." 21 84 Fed. Reg. 31410 (July 1, 2019). Is the objective, here, to assess the financial value of a program over a graduate's lifetime, or to determine that graduates "ability to pay" his/her loan debt two or three years out?

The "zone" concept is proposed to be eliminated, despite being included in the past two renditions of GE. The "zone" allowed additional time for a program to come into compliance if its annual earnings rate was between 8 percent and 12 percent or its discretionary income rate was between 20 percent and 30 percent. The setting of these thresholds appears to be **arbitrary** and not based on established data or methodologies. And there is no rationale provided for the elimination of the zone. I suggest that the zone should be reinstated.

Students at my eleven schools routinely borrow funds to cover living expenses, in excess of that which is necessary to cover tuition, when accessing a federal grant, state grant or V.A. Chapter 30 to cover all or most of his/her tuition. It makes sense for the Department to **exclude** federal grants, state grants and V.A. Chapter 30 from the total loan debt calculation. As proposed, these funds borrowed for living expenses are not deducted from the debt total included in the

D/E rate. **Institutions should not be held accountable for excess debt, beyond that to cover tuition and related expenses, which a student elects to incur.**

The eleven schools which I own and operate graduate more women than men, minorities, individuals with lower socio-economic status, immigrants, returning citizens, and members of the LGBTQ+ community – all of whom are **subjected to wage discrimination** in the United States. Calculating D/E or EP without recognizing and adjusting for wage discrimination will result in disparate earnings results. Again, flawed data.

My eleven schools are in rural areas, in metropolises, on the "south side" of major cities and in agricultural hubs. An institution should not be subject to sanctions based on the **socioeconomic status and demographics** of its students. Doing so could result in the **loss of Title IV** and the **closure** of those institutions who are making well-intended efforts to expand access and opportunity to students who are not served by mainstream institutions.

Likewise, my eleven schools are in diverse geographic locations. The earnings of students graduating from my schools will vary based on the **diversity of the geographic locations** within that state. As to my seven schools in Florida, the earnings potential in the middle of Florida, where farming and agriculture are prevalent, will vary significantly from the "gold coast", with its high-net-worth population. The Department needs to develop a methodology or protocol to address these geographic disparities in reported earnings. The regulation, as proposed, fails to do so.

The issue of under-reported income cannot be overly emphasized. For graduates from my schools - hair stylists, barbers, skin care technicians, nail technicians, massage therapists – cash for services and cash tips **are the norm** and **not the exception**. The Department must adopt a methodology to **solve the problem of unreported income**. In its opinion in AACS v. the U.S. Department of Education (the AACS Litigation), the court agreeing with AACS that the Department **did not adequately address** how underreported income would be treated when calculating the D/E ratios under the 2014 GE rule for programs like cosmetology. T**he election of some, if not all, graduates to underreport income should not be to the institution's detriment.** Institutions have absolutely no control over how graduates interact with the IRS.

Yet, the Department proposes once again to calculate D/E rates using **actual earnings** without offering **any solution for the underreported income problem**.

Because of this underreported income, my eleven schools are at **serious risk** of **failing** not only the **D/E calculation,** but also the **EP calculation**, which will also be based upon the "flawed", underreported income. T**he Department should resolve this shortfall, before it causes the demise of the cosmetology school sector.**

It is beyond comprehension to me that the Department proposes to eliminate the **alternate appeals process**. In the AACS Litigation, the Department advanced the alternate earnings appeal process **as a defense**, taking the position that because an appeal process was available to address underreporting, that **using the actual earnings** (albeit underreported) was justified. In the AACS Litigation, the Court found the Department's "narrowing of appellate

recourse" to be **arbitrary and capricious**. What could possibly be the rational for totally **eliminating the appellate recourse** this time around? Isn't that even more arbitrary and more capricious if eliminated? As proposed, there is no methodology or process to account for under-reported or self-employment income. And, then there is no appellate process through which to challenge an income determination made by the Department. I **urge the Department to re-address these issues.**

It makes sense that all of a former graduate's income, be it **earned or unearned**, should be considered for the calculation of D/E and EP, regardless as to how it is reported to the IRS. To do otherwise will result in, yet again, flawed data and flawed D/E and EP measurements.

The Department has proposed no methodology to address graduates with **no reported income**. As the regulation stands now, it is **assumed** that when no income is reported, that graduate is **unable to find employment** and the **program is penalized**. Graduates become incarcerated. Or disabled. Or pregnant. What about the "booth rental" graduate who accepts "cash-only" and does not report anything? Whatever federal agency the Department chooses to calculate these numbers should **exclude any graduate in the cohort who reports no income.** Then, in turn, the Department should **exclude the same number of students** with the highest loan debt **from the calculation of the median loan debt**.

I believe that the Department should mirror the 2011 and 2014 GE rules by using the **higher of the mean or median earnings** to calculate D/E. Back then, the Department advanced its argument that using the higher of the mean or median was the best approach and most fairly represented the earnings for the cohort. Here, the Department proposes only to use the median. Why the deviation?

I take exception to the EP measure, in its entirety. The Earnings Threshold, as proposed, is a **flawed metric** and does not provide a viable basis to compare the earnings of institution graduate to those of a high school graduate. Under the proposed rule, the **Annual Earnings** is based on the **actual earnings** of all of program's graduates, **whether or not they are seeking employment**. This disregards program graduates, for example, who elect not to work, are disabled or incarcerated or elect to stay home and be caregivers. The proposed **Earnings Threshold** only includes high school graduates who "**were actively looking for work** during the last 4 weeks" and "were available to accept a job." Everyone who "counts" under the Annual Earnings calculation is "dis-counted" under the Earnings Threshold calculation. **The comparison is inequitable.**

As proposed, the Annual Earnings (program graduates) is based on the actual earnings of all the program's graduates, as measured about **three years** after completion of their program. No cosmetology or massage graduates are employed in their career **prior to** completing their program – they have not yet attained the requisite certification or license. As a result, those program graduates will have been employed in the cosmetology sector **for three years or less** when their earnings are measured. Yet, the Earnings Threshold (high school graduates) includes earnings data for individuals **between the ages of 25 and 34**. Assuming those individuals graduated high school at age 18, it is possible and probable that these individuals may have been

employed in their current career for **as many as 16 years. Comparing a three year earnings history to a 16 year earnings history is inequitable**.

In the EP calculation, the **Annual Earnings (**institutional grads), being the sum total of all actual earnings of a program's graduates, will be representative of earnings in concentrated **geographic regions.** The collective earnings of my Hollywood Institute graduates in Casselberry, Florida (in the middle of the state) will be disparate to that of a my Hollywood Institute program's graduates in West Palm Beach, Florida (a wealthy city west of Palm Beach). Yet, the **Earnings Threshold** (high school graduates) will represent **median earnings throughout the state**. That, again, is an inequitable comparison.

The issues with EP are overwhelming and significant. I urge the Department to resolve these issues **before** the implementation of the regulation. The EP measure, as proposed, is reliant on the Annual Earnings (program graduates) data the Department obtains. **And that is flawed**, as I have repeatedly pointed out, here. No remediation of that flawed data has been proposed by the Department. If the Annual Earnings data is flawed or incomplete, the earnings premium measure will be flawed, fails to serve its purpose and wrongfully puts institutions at jeopardy of lower enrollments or closure.

The Department, in the proposed Rule, does not allow institutions an opportunity to review and correct its D/E rate data and calculations, once received by the Department from the federal agency, **prior to implementing sanctions**. I suggest that this is unfair and violative of due process. The opportunity to review and correct D/E calculations was included in GE in 2014; the Department issued draft D/E rates and the institution had the opportunity to challenge the accuracy of the loan data used to calculate the rates. This "**right to review and correct**", which has been **eliminated** in the proposed regulation, is tantamount to ensuring more accurate D/E rates. I'm undecided which omission by the Department most compromises fairness and due process - the omission of the alternate earnings appeal or the omission of the opportunity to review and correct D/E data.

As mentioned above, the Department has omitted the alternate earnings appeal process in this round of GE amendments. The 2014 GE rule permitted institutions to conduct an alternate earnings appeal, during which the institution could obtain alternate earnings information through a survey of its graduates and submit that data for use in recalculating its D/E rates. This alternate appeal process is **critical** to me, as an owner of eleven schools and who is on notice that my graduates **routinely either underreport or fail to report** their earned income. Presently, the Department argues that an appeal process is unwarranted, primarily because concerns regarding unreported income are **overstated**. These very arguments were rejected by the D.C. District Court in the AACS Litigation. It is incomprehensible to me that the Department is electing to ignore the outcome in the AACS Litigation and, in the alternative, to subject well-intended schools to inaccurate D/E calculations, which could lead to sanctions, loss of Title IV eligibility and school closures.

Student Disclosure Acknowledgements

There are many ways to measure the value of a postsecondary education other than by comparing debt to earnings. The extrinsic value of a postsecondary education is overlooked by the Department, in lieu of its obsession with debt and earnings. With increased income opportunities comes improved social status, increased personal security, less likelihood of relying on safety-net programs, and lesser risk of homelessness and incarceration. I suggest that these extrinsic values balance the D/E "cautionary" language on the Department's website.

Reporting Requirements (Subpart Q: 668.408)

The accountability and reporting requirements proposed under Subpart Q: 668.408 are unnecessary, overly burdensome, will require me to add administrative personnel and will result in tuition increases to cover those costs. And, to what end? Additional costs will be passed on to students, decreasing the financial value equation. And that is contrary to the Department's and the Regulation's intent.

GE Program Eligibility (Subpart S: 668.601 – 668.603)

It is inappropriate to penalize an institution if a program is being responsibly retired and produces failing D/E rates in its final years. Further, students who have enrolled in or remained enrolled in a program **with full knowledge** of a program's failing D/E rates and EP **should be permitted to receive Title IV aid until they complete the program.** At the core of the Federal financial aid programs is the unfettered ability for a student to select his/her program and institution. If a student loses aid, he/she may have no choice but to withdraw from the program. Some students may "drop out"; others may have difficulty finding another institution to which to transfer. All the potential outcomes are to the student's detriment and negate the taxpayers' investment in that student thus far.

And, if a student elects to continue in a program subject to a loss of eligibility due to failing D/E rates or EP, that student should continue to have access to Pell Grants and only lose access to the Title IV funds.

Student Warnings and Acknowledgments - (Subpart S: 668.605)

The warnings required in the proposed regulation will cause irreparable harm to programs, making it impossible to recruit future students and leading to program teach-out. As proposed, warnings are required if the institution **fails one year's metrics**. Institutions would not have the option of making market or program corrections if the failure is due to unforeseen events – like a nuclear disaster or climate disruption. Under the proposed regulation, the program is required to warn, which will cause irreparable harm, only because of an unforeseen event in a single year.

I recommend that the Department develop a more reasonable standard for warnings and loss of Title IV eligibility. Perhaps warnings are required after the second year of failure or the program loses eligibility if it fails three out of four consecutive award years, both scenarios providing for a pattern of poor performance. This would allow institutions a more reasonable opportunity to compensate for market shifts or other unforeseen events.

Financial Responsibility

I take exception to the requirement that institutions disclose dollar amounts spent in the preceding fiscal year on recruiting activities, advertising, and other pre-enrollment expenditures. With eleven schools, I spend a significant amount of money on these legitimate and revenue generating business activities. It is a good and acceptable business practice to ensure a continuous stream of revenue and has no correlation to the financial stability of my schools. The disclosures are overly burdensome, unwarranted, and unreasonable.

The Department should **simplify** the proposed financial responsibility framework; as proposed it is unreasonable, overly-burdensome and unnecessarily exhaustive. The Department is proposing **over 40 discrete events or actions** that **could** result in a determination of financially irresponsible. The proposed regulations identify 20 or so events that must be reported **if they may have occurred**. The burden on institutions here, especially small schools under 450 students, is extravagant and unnecessary. Compliance will be cumbersome and inconsistent. The Department should abandon this exaggerated schematic in favor of a simple set of criteria that all institutions can follow.

Being financially responsible is ingrained into every owner's business decisions. I understand the need to notify the Department when I cannot meet its financial responsibilities. I understands that I must notify the Department if one of my schools is in "material" danger of not meeting its financial responsibilities. The proposed regulation requires that **speculative** or **discretionary** triggering events be reported. Reporting should be limited to **material triggering events.** The Department should limit reporting to only those events which have a **material adverse effect** on that institution's ability to meet its financial responsibilities. The exhaustive and unnecessary list of "triggering events", as proposed, serves no purpose other than to frustrate institutions and require them to spend more money on administration. I would like to better understand the Department's statutory authority for this speculative reporting.

Again, I will raise a due process concern in relation to this aggressive need to report speculative triggering events which, in the Department's opinion, **may** indicate lack of financial responsibility and **may result in negative determination**. Institutions should be afforded an **opportunity to review any conclusions** reached by the Department, and **to provide a response to and evidence supporting** that response, to be evaluated and considered by the Department **before reaching any determination that an institution is not financially responsible.**

In the 2019 Final Borrower Defense Rule, the Department takes a position that any event triggers that are **speculative, abstract**, and **unquantifiable**, are not reliable indicators of an institution's financial condition or its ability to operate and should not be included in the financial responsibility framework. 84 Fed. Reg. 49861-2 (Sept. 23, 2019). The conundrum, here, is why that position has been abandoned?

I believe that the Department should consistently apply the standard adopted in 2019, as stated above. To be consistent with that 2019 position, I suggest that, at a minimum:

1. Proposed § 668.171(c)(2)(i)(B) concerning Lawsuits and Other Actions be eliminated;
2. Proposed § 668.171(c)(2)(i)(D) concerning Change in Ownership be eliminated;
3. Proposed § 668.171(c)(2)(iii) concerning Gainful Employment be eliminated;
4. Proposed § 668.171(c)(2)(iv) concerning Teach Out Plans be eliminated;
5. Proposed § 668.171(c)(2)(v) concerning State Actions be eliminated; and
6. Proposed § 668.171(c)(2)(vi) concerning Publicly Listed Entities be eliminated.

The term "material adverse effect" needs to be articulated and defined in the regulation, including the methodologies which the Department will apply to determine if a "discretionary" triggering event has had a "material adverse effect" on an institution. Without a clear definition of a "material adverse effect" against which defined methodologies can be applied to determine if a "discretionary" triggering event is material, it will be difficult to fairly and consistently administer the following discretionary triggers and they should be removed:

1. Proposed § 668.171(d)(1) concerning Accrediting Agency and Government Actions;
2. Proposed § 668.171(d)(3) concerning Fluctuations in Title IV Volume;
3. Proposed § 668.171(d)(6) concerning Pending Borrower Defense Claims;
4. Proposed § 668.171(d)(7) concerning Discontinuation of Programs;
5. Proposed § 668.171(d)(8) concerning Closure of Locations; and
6. Proposed § 668.171(d)(11) concerning Exchange Disclosures.

Alternative Standards and Requirements (668.175)

I disagree with the requirement as stated in 668.175(c) and (f), that an institution must also **remedy** "the issue(s) that gave rise to the failure **to the Department's satisfaction".** This requirement is untenable. Compliance, in many instances, will be impossible. Many triggering events cannot be "remedied" once they have occurred, or are beyond the control of the institution, such that meeting the standard is impossible. Even if a remedy is within the institution's control, it could take considerable time to implement that remedy. In the meantime, what is the status of the institution? Is it eligible for continued Title IV participation in the interim?

Change in Ownership (668.176)

My accreditors already micro-manage any change in ownership and/or control. Without accreditation, my schools cannot participate in the Title IV program. The changes proposed, here, will affect institutions and transactions differently. As to me and my eleven schools, I believe that the Department is unnecessarily burdening schools with these additional requirements which serve little or no purpose and is further and unnecessarily imposing itself into a private business transaction.

Administrative Capabilities

I am truly not understanding the Department's proposal to tie administrative capability to the number of passing GE programs (or enrollments in GE programs). Although a high number of failing GE programs could signal a financial vulnerability, there is no clear basis to conclude that high D/E rates or low EP would **indicate an inability to successfully administer** the Title IV program. As the NPRM makes clear, the D/E rates and earnings premium measure are designed to assess financial value, **not administrative capability**.

Ability to Benefit

The proposed regulation mirrors that negotiated in the NPRM, which outlines the requirements for demonstrating that programs are "eligible career pathway programs." I take no exception to the modified rule, as proposed.

I sincerely thank you for the opportunity to comment on these proposed Rule changes and hope you will take my comments into consideration. I am available to assist the Department in any way it deems valuable and to respond to any follow-up questions regarding the above comments.

Sincerely,

/s/
Neal R. Heller, Esq.

Neal R. Heller
Owner, CEO and President
Hollywood Institute and Cortiva Institute

Exhibit B

Federal Student Aid
An OFFICE of the U.S. DEPARTMENT of EDUCATION

Published on https://fsapartners.ed.gov/knowledge-center/library/dear-colleague-letters/2024-04-15/implementation-program-length-restrictions-gainful-employment-ge-programs

PUBLICATION DATE: April 15, 2024
DCL ID: GEN-24-06
SUBJECT: Implementation of Program Length Restrictions for Gainful Employment (GE) Programs

SUMMARY: This letter provides guidance and targeted flexibilities to institutions about upcoming changes to program length restrictions for nondegree GE programs.

Dear Colleague:

The Department has received numerous questions from institutions regarding the implementation of final Certification Procedures regulations published on October 31, 2023 (88 FR 74568). Among other provisions, those regulations limit the number of hours in a GE program to the greater of the minimum number of clock hours, credit hours, or the equivalent required for training in the recognized occupation for which the program prepares the student, as established by the state in which the institution is located or, in some cases, another state. As a result, some institutions may be required to reduce the number of credit or clock hours in a GE program in order to maintain Title IV eligibility. Additionally, in some cases a GE program will no longer qualify for Federal Pell Grant program eligibility and will need to satisfy placement and completion rate requirements in order to qualify for participation in the William D. Ford Direct Loan program. This letter provides guidance regarding the implementation of those new limitations and instructions for institutions that are required to reduce the number of hours in their GE programs.

Current Requirements – 150 Percent Rule

Under the current regulation at 34 CFR § 668.14(b)(26), programs that are required to lead to gainful employment in a recognized occupation (GE programs) must demonstrate a reasonable relationship between the length of the program and entry-level requirements for the recognized occupation for which the program prepares the student, which is sometimes referred to as the "150 percent rule." This relationship is considered reasonable if the number of clock hours provided in the program does not exceed the greater of 150 percent of –

- The minimum number of clock hours required for training in the recognized occupation for which the program prepares the student, as established by the state in which the institution is located if the state has established such a requirement, or as established by any Federal agency; or
- The minimum number of clock hours required for training in the recognized occupation for which the program prepares the student as established in a state adjacent to the state in which the institution is located.

Revised Requirements Impacting GE Program Length Effective July 1, 2024

The Financial Responsibility, Administrative Capability, Certification Procedures, and Ability to Benefit Final Rule published by the Department on October 31, 2023, amends the program length restrictions at § 668.14(b)(26) effective July 1, 2024 (88 FR 74568, 74696). The revised regulations rescind the existing 150 percent rule, further limiting the length of GE programs to the greater of –

- The required minimum number of clock hours, credit hours, or the equivalent required for training in the recognized occupation for which the program prepares the student, as established by the state in which the institution is located, if the state has established such a requirement or as established by any Federal agency; or
- Another state's required minimum number of clock hours, credit hours, or the equivalent required for training in the recognized occupation for which the program prepares the student if the institution is able to document and substantiate certain conditions as provided under § 668.14(b)(26)(ii)(B).

Please note this GE program length limitation does not apply for occupations where the state entry-level requirements include the completion of an associate or higher-level degree, or where the program is delivered entirely through distance education or correspondence courses.

Applicable GE programs that exceed these length restrictions by any amount are ineligible in their entirety to participate in the Title IV programs.

Program Length Reporting and Flexibilities for Existing Students

The above changes to GE program length restrictions will, in some cases, impact the maximum allowable length for Title IV-eligible GE programs currently offered by institutions. In such cases, institutions will ultimately be required to report the revised program length to the Department through Partner Connect once no students remain in the legacy version of the program, as further described below.

As the Department noted in the preamble to the final rule, we believe that it would not be appropriate for this new requirement to affect students who are already enrolled in eligible programs, as we do not want to disrupt those students' educational plans if their program were to lose Title IV eligibility due to exceeding the revised GE program length limitation (88 FR 74568, 74636). Therefore, we will permit institutions to continue offering a program after the implementation date of the regulations that exceeds the applicable maximum length for students who were enrolled in the program prior to the effective date of the regulatory change. For such existing GE programs, institutions will be allowed to continue to serve through completion students who enroll in the program on or before June 30, 2024, under the provisions of the 150 percent rule.

This will mean that some institutions may temporarily offer two versions of the same program concurrently, but they will not be able to enroll new students on or after July 1, 2024, in the version of the program that exceeds the number of hours required by the state. The specific procedures the institution must follow will depend upon the characteristics of the program.

Programs that continue to include the regulatory minimum hours

The Department expects that, in many cases, the revised number of clock or credit hours will not result in the program becoming shorter than the regulatory minimums at § 668.8(d)(1) of 600 clock hours, 16 semester or trimester credit hours, or 24 quarter credit hours, as applicable. In cases where the revised program length does not drop below this threshold — or if the revised program includes at least 300 clock hours, 8 semester or trimester credit hours, or 12 quarter credit hours and only admits students who have completed the equivalent of an associate degree — the Department will not require the institution to report the revised program length until all students who enrolled on or before June 30, 2024, in the longer version of the program have graduated, transferred, or withdrawn. Once no eligible students remain in the legacy version of the program, the institution must then report the updated program length to the Department through Partner Connect and submit appropriate state and accreditation approval documentation reflecting the updated program length. Please note, however, that during this period in which the institution offers two versions of the same program, the institution must carefully track and document which students are associated with each version of the program and must correctly report payment period and disbursement information through the Department's Common Origination and Disbursement (COD) system.

For example, a community college offers a massage therapy program consisting of 900 clock hours, but the state requires only 750 hours for students to qualify to test for licensure (and no other exception applies). The program remains eligible, but eligible students who enroll in the program on or after July 1, 2024, will receive prorated Pell Grant amounts based on a program length of 750 clock hours. However, the Department will not enforce the 750-hour requirement for eligible students who first enrolled in the program on or before June 30, 2024. For these students, the community college may concurrently offer the 900-hour program and these students will remain eligible for unprorated Pell Grant awards based on the previous program length of 900 clock hours. Once all students who first enrolled on or before June 30, 2024, have graduated, transferred, or withdrawn from the program, the institution must report the revised program length of 750 clock hours to the Department through Partner Connect.

Programs that are reduced to fewer than the regulatory minimum hours – short-term programs

In some cases, however, the rescission of the 150 percent rule may cause the length of a program to drop below the aforementioned minimums. Programs that admit students without the equivalent of an associate degree and that include less than 600 clock hours, 16 semester hours, or 24 quarter hours will no longer be eligible to participate in the Federal Pell Grant and Campus-based programs, but would remain eligible, at the institution's option, to participate in the Direct Loan program under § 668.8(d)(3). These programs, also known as short-term programs, must be offered in clock hours and consist of 300 to 599 clock hours. These programs also include certain additional requirements, as further discussed below.

In these situations, an otherwise-eligible student who began enrollment on or before June 30, 2024, in a program that met the minimum program-length criteria at §668.8(d)(1) can continue to receive Pell Grants and Campus-based funds until completing, transferring, or withdrawing from the program. Students beginning enrollment in the program on or after July 1, 2024, could be eligible only for Direct Loans. Programs that continue as short-term programs as of July 1, 2024, following the rescission of the 150 percent rule must report the shortened program length to the Department as a new program through Partner Connect, including appropriate state and accreditation approval documentation reflecting the updated program length, and wait for the Department's approval to offer Direct Loan funds to students while leaving the existing version of the program open on the application. The institution must subsequently report an end date for the previous version of the program once all students who enrolled on or before June 30, 2024, have graduated, transferred, or withdrawn from the legacy program.

For example, a technical college offers a barbering program consisting of 700 clock hours, but the state requires only 500 hours for students to qualify to test for licensure (and no other exception applies). The program can remain eligible as a short-term program for purposes of the Direct Loan Program only, but the institution must report the new version of the program to the Department through Partner Connect within 10 days of when this version of the program is first offered. Eligible students who enroll in the program on or after July 1, 2024, could only receive Direct Loans. However, the Department will not enforce the 500-hour requirement for eligible students who first enrolled in the legacy program on or before June 30, 2024. For these students, the technical college may concurrently offer the 700-hour program and these students will remain eligible for Title IV awards, including Pell Grants, based on the previous program length of 700 clock hours. Once all students who first enrolled in the program on or before June 30, 2024, have graduated, transferred, or withdrawn from the program, the institution must report an end date for the legacy version of the program through Partner Connect within 10 days.

Programs that are reduced to fewer than the regulatory minimum hours – ineligible programs

Programs that are required by the new rule to drop below 300 clock hours, 8 semester hours, or 12 quarter hours will no longer meet the regulatory definition of an eligible educational program for purposes of an institution's Title IV program participation. Therefore, students who newly enroll in, or re-enroll after withdrawing or being withdrawn from, these educational programs on or after July 1, 2024, will not be eligible for Title IV aid. However, the institution may continue to concurrently offer the program at the original higher clock-hours for students who are enrolled prior to that date, and these students will remain eligible for Title IV aid until those students withdraw, transfer, or graduate from the program. If the institution reduces the length of the program or chooses to discontinue the program, the institution must report the change in eligibility status to the Department no more than 10 days after the date that the last Title IV-eligible student ceases enrollment in the program. An institution that fails to timely report a required update may be subject to additional oversight requirements or an adverse action.

For example, an institution offers a nail technician program consisting of 400 clock hours, but the state requires only 275 clock hours for students to qualify to test for licensure (and no other exception applies). This short-term program will become ineligible to participate in the Title IV programs as of July 1, 2024, the effective date of the regulations. However, the Department will not enforce the 275-hour requirement for eligible students who first enrolled in the program on or before June 30, 2024, and who remain continuously enrolled in the educational program from June 30, 2024, until they graduate, transfer or withdraw from the program. For these students, the institution may concurrently offer the 400-hour program students and these students will remain eligible for Direct Loans based on the previous program length of 400 clock hours. Once all students who first enrolled in the program on or before June 30, 2024, have graduated, transferred, or withdrawn from the program, the institution must report an end date for the program through Partner Connect within 10 days. An institution may allow a student to resume enrollment in such an educational program following the expiration of an approved leave of absence for Title IV purposes which starts on or before June 30, 2024, but an institution may not allow a student to begin an approved leave of absence for Title IV purposes from the program after June 30, 2024. In this case a student who requests a leave of absence from an educational program that no longer meets the regulatory definition of an eligible program must withdraw and the student may enroll in another eligible educational program after June 30, 2024.

Completion and Placement Rates for Short-Term Programs

In addition to demonstrating reasonable program length under § 668.14(b)(26) as discussed above, § 668.8(e) stipulates that to maintain Direct Loan eligibility the institution must also demonstrate in their annual audit reports, including reports submitted under the Single Audit Act, that a short-term program maintains a substantiated completion rate of at least 70 percent and a substantiated placement rate of at least 70 percent, as calculated under the provisions of § 668.8(f). The Department is aware that, as a result of the rescission of the 150 percent rule, some existing programs will become short-term programs as of July 1, 2024, and that institutions may not be able to immediately track and substantiate completion and placement rates of existing longer programs for which those rates are not currently required.

Programs that are required to become short-term programs because of the regulatory change effective July 1, 2024, are not required to have placement and completion rates of at least 70 percent for the 2023-24 award year, during which time the program was not a short-term program. However, the program will be required to maintain those rates in the 2024-25 award year and thereafter. In these limited instances, the Department will not enforce the requirement that institutions report completion and placement rates for these programs in compliance audits under § 668.23 for fiscal years that begin prior to July 1, 2025.

Limited Waiver of Two-Year Rule

Under §§ 600.5(a)(7) and 600.6(a)(6) there are some circumstances, such as a recent change of ownership or a recent initial certification to participate in the Title IV programs, where an institution is required to demonstrate that a program has been in existence for at least two years for that program to qualify for Title IV eligibility. These restrictions are commonly known as the "two-year rule." As explained above, as a result of the rescission of the 150 percent rule institutions will, in some cases, be required to report an existing program as a new program to the Department through Partner Connect. We recognize that, under these circumstances, the institution has not in fact developed or deployed a new program but is only reporting a new program to meet a regulatory requirement. As such, if the regulatory change is the sole reason for the reduction in length of a program, the Department will not treat the revised version of the program as a new program and will include the period during which the prior version of the program was in operation as part of the required two years of existence. Such institutions with a restriction

on growth or that need to meet the two-year rule must enter a comment on the E-App in the "Section G. Educational Programs – Additional Information" field stating that they are requesting an exception to that limitation because the program modification is required by the rescission of the 150 percent rule. Institutions to which the two-year rule otherwise applies must still meet those requirements before adding any other new programs.

If you have further questions about GE program length restrictions or the flexibilities described in this letter, please use the Contact Customer Support form in FSA's Partner Connect Help Center. To submit a question, enter your name, email address, topic, and question. When submitting a question related to this Dear Colleague Letter, please select the topic "FSA Ask-A-FED/Policy." In addition, the Department will post frequently asked questions to the OPE Guidance website.

Thank you for your continued support of the Title IV, HEA programs.

Sincerely,

Antoinette Flores
Deputy Assistant Secretary for Policy, Planning, and Innovation
Office of Postsecondary Education

Exhibit B

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

360 DEGREE EDUCATION, LLC, d/b/a Cortiva Institute and THE COALITION FOR CAREER SCHOOLS, Plaintiffs, v. U.S. DEPARTMENT OF EDUCATION; and SECRETARY MIGUEL A. CARDONA, in his official capacity as Secretary of the Department of Education, Defendants.	Case No. _____

DECLARATION OF LYNELLE LYNCH

I, Lynelle Lynch, do declare under penalty of perjury and pursuant to 28 U.S.C. § 1746, that the following is true and accurate to the best of my information and belief:

1. I am the President and Chief Executive Officer (CEO) of Poway Academy of Hair Design, Inc., and Beauty Boutique, Inc. Both entities are California corporations that do business as Bellus Academy.

2. Bellus Academy is a member of The Coalition for Career Schools.

3. Bellus Academy has four institutions, located in Poway, California; El Cajon, California; Chula Vista, California; and Manhattan, Kansas.

4. Bellus Academy offers programs in cosmetology, esthetics, manicuring, make-up artistry, and barbering.

5. As President and CEO of Bellus Academy, I have developed a keen understanding of the issues and implications of the U.S. Department of Education's (the "Department") final rule regarding certification to receive federal student aid under Title IV of the Higher Education Act of 1965, as amended ("Title IV of the HEA"). *See* 88 Fed. Reg. 74568 (October 31, 2023) (the "Final Rule").

6. I am especially familiar with the Final Rule's provisions and how they have harmed, continue to harm, and will substantially threaten further harm to Bellus Academy as well as its students, staff, and the communities they serve both before and after the Final Rule takes effect on July 1, 2024.

7. By virtue of its participation in the Department's Title IV, HEA program, Bellus Academy is subject to the Final Rule's provisions and requirements.

8. The Final Rule requires Bellus Academy in California to reduce the Spa Nails Program from 600 clock hours to 400 clock hours, California's minimum requirement, to qualify to participate in Title IV, HEA programs, including Federal Pell Grants or Direct Loans. As the Department acknowledged in its Dear Colleague Letter, GEN-24-06, Implementation of Program Length Restrictions for Gainful Employment (GE) Programs, dated April 15, 2024, a program must be at least 600 clock hours to qualify for the Federal Pell Grant Program. Accordingly, Bellus Academy's students will no longer be able to receive Pell Grants, which do not need to be repaid, and instead will have to take pay cash as Bellus Academy does not offer Direct Loans for programs less than 600 hours to enroll in the Spa Nails Program.

9. Similarly, Bellus Academy's Esthetics 103 Program in California, which is an advanced program, will be completely eliminated because this Program is 900 clock hours. Bellus Academy will only be able to offer its basic Esthetics Program, which is 600 clock hours, the

minimum for licensure in California. As a result of the Final Rule, Bellus Academy will no longer be able to offer training on eye lash extensions and advanced clinical protocols such as advanced facial peels or training on the use of machines utilizing advanced technologies, i.e., Aqua-Boost Professional Hydro-dermabrasion Facial Machine, Aqua-Boost Professional Hydro-dermabrasion Facial Machine, as part of the Esthetics 103 Program.

10. Additionally, the Spa Nails and Esthetics 103 Programs currently qualify for International Certification through Comité International d'Esthétique et de Cosmétologie (CIDESCO), which has been defining professional standards in the Beauty Therapy Industry since 1946 and has developed certificates recognized globally for graduates to obtain employment abroad. CIDESO certificates are recognized in various countries, including Albania, Australia, Austria, Bahrain, Barbados, Belarus, Canada, Cayman Islands, Chile, China, Costa Rica, Cyprus, Denmark, Estonia, Fiji, Finland, France, Germany, Greece, Hungary, India, Indonesia, Ireland, Israel, Italy, Jamaica, Japan, Latvia, Lebanon, Lithuania, Malaysia, Malta, Moldova, Morocco, Netherlands, New Zealand, Nigeria, Norway, Peru, Qatar, Romania, Singapore, Slovenia, South Africa, South Korea, and Sweden.

11. As a result of the Final Rule, the Spa Nails Program and Esthetics 103 Program in California will decrease in length and thus will no longer fulfill the standards for CIDESCO international certificates. Many students at Bellus Academy are military spouses. The opportunity to obtain the CIDESCO international certificate allows these Bellus Academy graduates to maintain their occupations overseas where they are stationed with their spouses who are serving the U.S. military. The CIDESCO international certificate also permits students to work on cruise ships traveling to different countries. As Bellus Academy will no longer be able to offer programs

that satisfy the minimum standards for CIDESCO international certification, new students may now lose these employment opportunities.

12. As President and CEO of Bellus Academy, I submitted a public comment to the Department during the public comment period to specifically raise my concerns about the loss of international certificate programs. A true and accurate copy of my public comment, ED-2023-OPE-0089, is attached to this Declaration as Exhibit A.

13. The Department did not respond to my unique public comment and concerns regarding the impact of the proposed and now-Final Rule on programs that lead to an international certificate.

14. The Department also did not respond to my public comment regarding the express statutory prohibition on the Department to "exercise any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any educational institution." 20 U.S.C. § 3043(b). The Department is effectively exercising direction, supervision, or control over the curriculum of Bellus Academy's cosmetology, esthetics, barbering, and manicuring programs because these programs will no longer qualify for any federal student aid under Title IV of the HEA unless these programs are the absolute minimum length that California and Kansas, respectively, require for a license to practice these essential occupations.

15. As a result of the Final Rule, Bellus Academy's Advanced Cosmetology Program in California, which currently requires 1,500 clock hours, will be completely eliminated. Instead, Bellus Academy will only be able to offer its Basic Cosmetology Program, which is 1,000 clock hours, the minimum for state licensure in California. The Advanced Cosmetology program offers training for hair extensions, lash extensions, and hair replacement techniques as well as advanced cut and color techniques. Students used to have a choice as to whether to enroll in the Basic

Cosmetology Program or Advanced Cosmetology Program, and they will no longer have that option on and after July 1, 2024, as a result of the Final Rule.

16. Additionally, Bellus Academy in California offers a combined Barbering and Cosmetology Program which is 1,800 clock hours total, and will be completely eliminated once the Final Rule becomes effective on July 1, 2024. California requires a minimum of 1,000 hours for licensure for cosmetologists and a minimum of 1,000 hours for licensure for barbers. This combined Barbering and Cosmetology Program is 200 hours less than the 2,000 hours, respectively, required to become licensed as both a barber and a cosmetologist in California. This combined Barbering and Cosmetology Program actually minimizes a student's time in school and thus minimizes any debt. As a result of the Final Rule, Bellus Academy will no longer be able to offer the combined Barbering and Cosmetology Program. Instead, the students will now have to graduate from either the Barbering Program or the Cosmetology Program and wait for a new start date to enroll in the second program which could mean a gap in education of up to 4 weeks.

17. Bellus Academy's programs in Kansas also will suffer harm as a result of the Final Rule. Bellus Academy's Cosmetology 102 Program in Kansas, which is 1,650 clock hours, will be completely eliminated as the minimum for licensure in Kansas is 1,500 clock hours. Bellus Academy's Esthetics 102 Program in Kansas also will be eliminated, as the minimum for licensure in esthetics in Kansas is 1,000 hours. Finally, Bellus Academy's Barbering Program in Kansas will be reduced from 1,500 hours to 1,200 hours, which will force Bellus Academy to eliminate training on the Advanced Barbering sections, which includes the Dermalogica Curriculum, Advanced Men's Cutting and Color, and the Men's Hair Replacement System.

18. Approximately 68% of Bellus Academy's students in California, and 57% of its students in Kansas currently receive Pell Grants. As a result of the Final Rule, new students will

either lose eligibility for Pell Grants if the program length on or after July 1, 2024, is less than 600 clock hours or will receive less in Pell Grants for the programs due to the decrease in program length.

19. Bellus Academy enrolls students in its programs every four weeks, and newly enrolled students on or after July 1, 2024, will be immediately and imminently impacted by this Final Rule.

20. Bellus Academy has spent much time and effort in attempting to understand and comply with the Final Rule. Bellus Academy's staff has spent approximately 445 hours in attempting to receive approvals for its programs to comply with the Final Rule and in preparing its catalogs, course materials, and curricula to comply with the Final Rule, should it become effective on July 1, 2024.

21. As President and CEO of Bellus Academy, I am left with incredibly difficult choices to make for our students, staff, and operations if the Final Rule becomes effective on July 1, 2024. I do not wish to decrease our staff or shut down any of the Bellus Academy's campuses, but this Final Rule will have devastating impacts on Bellus Academy's students and employees.

Executed this 30th day of May, 2024.

DocuSigned by:
Lynelle Lynch
47F67BBAA66744B...

Lynelle Lynch

Exhibit A

BELLUS ACADEMY

June 20, 2023
The Honorable Miguel Cardona
Secretary of Education
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

Re: Comments of Bellus Academy on the Proposed Financial Value Transparency and Gainful Employment (GE) (Docket ID ED–2023–OPE–0089)

Dear Secretary Cardona:

Bellus Academy respectfully submits comments in response to the request from the U.S. Department of Education (the "Department") on its Notice of Proposed Rulemaking ("NPRM") concerning Financial Value Transparency and Gainful Employment (GE) published in the Federal Register on May 19, 2023 (Docket ID ED–2023–OPE–0089).

Bellus Academy has been owned by William D Lynch since 1972 with 3 locations in San Diego County, California with 3 separate OPEID's. In 2005, Lynelle Lynch (wife of Mr. Lynch) assumed the role of President and in 2009 became a 33% owner. The schools were rebranded Bellus Academy in 2009. In 2011 the Manhattan Kansas location was added as a branch campus expanding from 3 to 4 locations. Bellus Academy is a proud member of both the American Association of Cosmetology Schools (AACS) and Career Education Colleges and Universities (CECU) where we support our students with the education and leadership we receive from both associations.

Annually the schools enroll approximately 1254 students into 23 programs. Bellus has been recognized for our relentless dedication to educational excellence with a variety of advanced curriculum added into our programs.

We have a rich history of overachieving the accreditation rates:

2021 Year	Poway, CA	El Cajon, CA	Chula Vista, CA	Manhattan, KS
Licensure Rate	94%	100%	80%	100%
Graduation Rate	83%	84%	72%	84%
Placement Rate	65%	66%	63%	80%

BELLUS ACADEMY

The schools' demographics are listed below by school:

	Poway, CA	El Cajon, CA	Chula Vista, CA	Manhattan, KS
Diversity %				
Native American	2%	1%	0%	0%
Asian	5%	6%	7%	1%
Black or African American	5%	18%	15%	11%
Hispanic/ Latino	36%	31%	59%	12%
Native Hawaiian	2%	0%	1%	0%
White	39%	30%	9%	69%
Two or More Races	12%	12%	7%	8%
Female %	93%	97%	84%	97%
Pell eligible %	57%	63%	83%	53%
Age %				
24 and Under	51%	43%	41%	68%
25 and Over	49%	57%	59%	33%

Although we are generally supportive of the Department's goals to promote transparency, competence, stability, and effective outcomes for students, we have numerous concerns regarding the Department's regulatory proposals. In particular, there are several aspects of the proposed rules that are legally problematic or will create unworkable standards for institutions and adversely impact the workforce.

Our concerns are set out below. We hope our comments play a constructive role in helping the Department develop a final rule that benefits the entire professional beauty and wellness industry and the higher education community that supports the industry.

Financial Value Transparency and Gainful Employment (GE)

First, Bellus Academy supports the application of the proposed Financial Value Transparency framework to all institutions and programs. We generally support accountability frameworks that disclose to the public meaningful, well-reasoned, and accurate student outcome metrics for all programs at all institutions in ways that protect both students and taxpayers and respect institutional missions.

We do not believe the Department should make program eligibility determinations based on metrics calculated using data from years that precede the effective date of the rule. Specifically, in California we have been devastated by COVID with work restrictions and our graduates had multiple challenges during this time. Any new rule must focus on future years.

The Department must take into consideration programs where the state board has reduced the hours required for licensure which has also significantly lowered the debt to the students. In

BELLUS ACADEMY

California we reduced the Cosmetology program from 1600 hours to 1000 hours and the Barbering program was reduced from 1500 hours to 1000 hours. The effective date for Bellus Academy on the change of programs was January 1, 2023. The change in hours has significantly lowered the student debt. Utilizing data from years prior to 2023 will not accurately report the current debt for future students in both Cosmetology and Barbering.

We believe that the Department must include a transitional rate opportunity for GE programs. The proposed rule has the potential to have all the Cosmetology related programs fail, and any rule that would eliminate an industry is not good policy. The Proprietary / For – Profits schools educate approximately 85% nationally of all Cosmetology graduates, and schools must be given the opportunity to adjust to program specifics that will allow them to serve this very important profession.

We believe the Department must develop a solution to the problem of unreported and under reported income. The Beauty industry is recognized for both under-reporting as well as the lack of tip reporting. This is a well-documented issue that has been supported by the IRS and has been utilized in legal proceedings under prior GE rules. The Beauty and Wellness industry has taken the lead in collecting industry data to better present facts on the real earnings of professionals in the industry. A copy of these reports is available as an attachment to this letter. In addition, there are numerous categories of IRS codes that apply to the beauty and wellness profession which might miss income from graduates. Many professionals work independently as a free-lance, booth renter or become an owner that would not be captured as income.

One of our strongest oppositions to the GE rule is the implementation of an accountability framework that includes an earnings premium measure as contemplated in the proposed rule because the Earnings Threshold is not a meaningful or appropriate basis of comparison. The proposed rule utilizes high school graduates who are between the ages of 25 to 34 working full-time, which is not an apple-to-apple comparison. Graduates from Beauty school can be 19 – 24 and the average hours worked for full-time professionals is typically 26 – 30 hours. This fact is detailed in the Qnity and ISPA report that is attached. Graduates of beauty school should not be compared to a cohort that is significantly different in both the number of hours they work as well as their age. Individuals who select a career in Cosmetology are predominantly women and choose this profession for the work / life balance that it affords them and their family. We find the earnings threshold to be discriminatory to a sector of professionals who choose a career in beauty and wellness for very specific reasons.

We are strongly opposed to the Department's removal of the alternate earnings appeal. We recognize that this process must provide an institution an adequate opportunity to present and have considered rebuttal evidence of the earnings data based on the vast range of careers a graduate can select. Many of our Bellus Academy graduates are women who have selected this career for work life balance as they raise their family. Many take a year off for the birth of a new child and the family has the ability to afford both taking the time off and repaying their student loan. Earnings is not a metric that can determine the viability of a program when there are so many other

BELLUS ACADEMY

life factors. We strongly encourage the Department to identify another metric to determine the value of a program such as loan repayment rates.

We do not believe the Department should impose sanctions for metrics calculated using data from years that exceed required record retention periods. At Bellus Academy we have implemented the Department of Education's requirement for record retention and therefore we only keep records for 7 years. The last year we have stored is the academic year of 2016.

On its website, and in its various acknowledgements and warnings, we believe the Department should recognize that there are many ways to measure postsecondary education value, not just the debt to earnings ratio. At Bellus Academy we support our students with financial literacy and service-learning curriculum that builds strong life skills and personal character. Students who graduate from Bellus Academy have life skills beyond their trade skills that prepare them for the real world. We would like to recommend that instead of only valuing programs based on debt to earnings, the department evaluate life skills provided within the curriculum that positions students for success.

We believe the Department must develop a means to account for the impact of geographic location on reported earnings. Bellus Academy has campuses in California and Kansas. The compensation for the 2 states is very different, as is the cost of living. We strongly believe that geography must be considered when calculating the debt to earnings rates.

We do not believe that an institution should be penalized if a program is being responsibly retired and produces failing D/E rates in its final years. Bellus Academy has eliminated programs over the years as we have identified new programs that better fit the industry service demands. A program that an institution voluntarily determines to wind down could suffer a decline in its D/E rates or earnings premium, particularly if the decision to wind down the program was based in part on market changes. Under the Department's proposal, an institution would be prohibited from reintroducing that program for three years, even if the new version is shorter, less expensive, and redesigned to be more attractive to employers.

We believe that students who have enrolled in or remained enrolled in a program with full knowledge of a program's D/E rates and earnings premium should be permitted to receive Title IV aid until they complete the program. As stated previously, the programs in Beauty and Wellness have a vast range of career and income options. If someone has decided to complete a program where the majority of the graduates are women and chose to work part time, this should not cause a currently enrolled student to lose their Title IV access.

We believe the Department must provide institutions with a meaningful opportunity to review and correct its D/E rate data and calculations prior to implementing sanctions. The Department must allow the schools time to review the loan data and check for accuracy. Bellus Academy enrolls many students who have had prior higher education and loan debt. One reason is that the society pressure to attend "college" is very prevalent and approximately 75% of our students come to us with some

BELLUS ACADEMY

prior higher education. We would not want this data to be included in our loan debt, therefore we would like the opportunity to review and correct the loan data by student.

Student Warnings and Acknowledgments (Subpart S: 668.605)

We strongly believe that the proposed warnings will cause irreparable harm to programs, making it impossible to recruit future students and leading to program teach-out. A school is required to make significant student warnings if it fails only a single year. As such, the current proposal affords institutions virtually no opportunity to adjust for market shifts or other unforeseen events. Under the Department's proposal, the program would be required to make the student warnings due to this single-year anomaly, which we believe would likely force it to close, eliminating an entire school without time to adjust. We urge the Department to develop a more reasonable standard.

General Financial Responsibility (668.171)

We believe the Department should simplify the proposed financial responsibility framework. The rule lists 40 "events" that could lead an institution to a determination that it is not financially responsible. Further, the proposed regulations identify at least **20** different events or activities that must be reported to the Department if they may have occurred. The Department should eliminate this portion of the rule.

We believe the Department should guarantee institutions an opportunity to provide input and evidence, and commit to reviewing any such input or evidence, prior to reaching any determination that an institution is not financially responsible. It would be unreasonable and inconsistent with notions of due process to penalize an institution prior to affording it an opportunity to provide information concerning the nature and materiality of a triggering event to the institution's financial health. Bellus Academy has a history of meeting our financial ratios and having strong audit reports. It would be very concerning not to have a just process if at some point in our future there was concern over our financial responsibility. Moreover, it would be poor public policy.

Program Participation Agreement (668.14)

We believe the Department should eliminate co-signature requirement at proposed § 668.14(a)(3)(ii) as it is inconsistent with the Department's statutory authority. The Department's authority to require financial guarantees from owners derives from HEA Section 498(e), which provides that the Secretary has the authority to require financial guarantees from the institution and *individuals* who exercise substantial control. The Secretary does not have statutory authority to require financial guarantee from an *entity*. The Department must also amend the proposed regulation to ensure that it does not require financial guarantees from institutions that meet the requirements of HEA § 498(e)(4).

The Department should eliminate its proposed edits to § 668.14(b)(26), which would cap the Title IV eligibility for certain programs that lead to gainful employment in a recognized occupation. The length of educational programs, regardless of industry, is the prerogative of institutions and the

BELLUS ACADEMY

purview of accreditors. Institutions are in the best positions to determine appropriate program lengths and curricula. Bellus Academy has both state board licensed programs as well as programs of longer length that lead to an international certificate. Students who seek our advanced training should be allowed to take the program that will best set them up for success. Bellus Academy has dual oversight within the state of California and Kansas and the state agency has approved all of our program offerings. In addition, we are accredited by NACCAS, and the accreditor has a very detailed process to approve programs which we have utilized to have our programs established as recognized programs for Title IV eligibility for our students. The Department's proposed cap attempts to assert federal control into an area where such control is not appropriate. We observe that Congress, concerned with the potential for such overreach, expressly prohibits the Department from attempting to "exercise any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any educational institution."

The Department should eliminate its proposed edits to § 668.14(b)(32)(ii), which unfairly limits student choices. Under proposed § 668.14(b)(32)(ii), an institution must determine that a program satisfies the applicable educational prerequisites for professional licensure or certification requirements in the State where the student is enrolled. Many of Bellus Academy's students decide to move or work overseas and therefore must have access to certification programs that are international and not recognized by the state. The Department should not remove these programs and eliminate access for students who wish to take these programs.

Standards of Administrative Capability (668.16)

We believe the Department should eliminate its proposal to include "adequate career services" as a requirement for administrative capability. Bellus Academy offers career services to all our students, and we value the service we provide. We already must perform this service, report our student outcomes to our state and accreditor, therefore we do not see the need for this additional rule to be added. We respectfully request that this is eliminated from the rule.

Conclusion

Thank you for the opportunity to comment on proposed changes to the rules governing financial value transparency and gainful employment regulations.

We are available and stand ready to assist the Department with any follow-up questions regarding the above comments.

Sincerely,

Lynelle Lynch

Lynelle Lynch
CEO
Bellus Academy

Exhibit C

CALIFORNIA DEPARTMENT OF CONSUMER AFFAIRS
BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY • GAVIN NEWSOM, GOVERNOR
Board of Vocational Nursing and Psychiatric Technicians
2535 Capitol Oaks. Drive Suite 205, Sacramento, CA 95833-2945
P (916) 263-7800 | F (916) 263-7855 | www.bvnpt.ca.gov

March 14, 2024

Gregory Martin
Director, Policy Development Group
U.S. Department of Education
Office of Postsecondary Education
LBJ Building, 400 Maryland Avenue, S.W.
Washington, DC 20202

Dear Mr. Martin:

The California Board of Vocational Nursing and Psychiatric Technicians (BVNPT or Board) is the licensing and regulatory authority for approximately 144,000 Licensed Vocational Nurses (LVNs) and 11,000 Psychiatric Technicians (PTs) in California. The Board serves and protects the public by licensing qualified and competent VNs and PTs through ongoing educational oversight, regulation, and enforcement. California represents approximately 11% of the nation's active LVNs.

We are writing to express our concern regarding the July 1, 2024 implementation date for 34 CFR 668.14(b)(26)(ii) and to ask for an 18-month delay in its implementation. This provision will impose a limit of 1530 hours for education programs to be eligible for Title IV funding. Delayed implementation of this provision would allow our Board hold schools accountable for their required hours and ensure that they reflect what is needed to train future LVNs and PTs while protecting the quality and viability of the education programs.

California law currently requires LVN education programs under BVNPT to consist of no less than1530 hours to cover required content. (Cal. Code Reg. ti. 16, § 2532, subd. (a).) BVNPT currently oversees 168 LVN education programs, 133 of which currently require between 1550-1840 hours. The nearly 80 percent of programs that currently require more than 1530 hours would no longer be eligible for Title IV funding when 34 CFR 668.14(b)(26)(ii) is implemented. To maintain Title IV funding, these programs would have to reduce the number of hours which would, in turn, require BVNPT approval of the curriculum change. To date, not one of these programs have made a request for approval of a curriculum change.

BVNPT reviews requests for the approval of curriculum changes by an LVN education program on a case-by-case basis to ensure compliance with Cal. Code Reg. ti. 16, § 2532. Each proposed curriculum change must be considered and approved by the Board to ensure the program will still provide its students with a high-quality, compliant curriculum that will provide the knowledge, hands-on skills, and critical reasoning abilities needed to become a successful VN or PT. Substantive changes in curriculum require review and analysis by the Board's Nursing Education Consultants (NECs), highly experienced and educated professionals in the field of nursing and nursing education, and ultimately, approval by the Board.

It is virtually impossible for BVNPT to consider and approve 133 program changes prior to July 1, 2024.

- In a typical year, the Board typically approves 15-20 program revisions, through a process that takes an average of 45-50 hours per review.
- This is generally a small part of the NECs' assignments. They are also responsible for critical consumer-protection tasks, such as the review and approval of faculty and facilities, meeting with directors, replying to Scope of Practice questions, helping train program directors, performing site visits, preparing recommendations related to admitting classes, continued approval, and responding to grievances.

Unless the implementation of 34 CFR 668.14(b)(26)(ii) is delayed, California will likely experience negative impacts, such as:

- The nursing shortage in the nation's most populous state would be exacerbated if the existing schools decide to not admit any new student cohorts until their program change applications are approved, potentially reducing the number of nursing students in the pipeline between July 1 and December 31 of this year by up to 4000.
- Vocational nursing students may turn to riskier or less favorable means to finance their education if existing schools decide to continue enrolling students into programs that are no longer eligible for Title IV funding. The average tuition at the private programs ranges from $20,000 to $38,000 and more than half of the students depend on Title IV.

While this letter focuses on LVN programs, the impact of 34 CFR 668.14(b)(26)(ii) would extend to other program types. About half of BVNPT's approved PT education programs have suffered decreasing enrollment. If PT students cannot get Title IV funding to finance their education, this decline will likely grow, perhaps forcing some programs to close, decreasing the number of PT programs and PTs for the community. With the growing need for mental health professionals, this further constricts the pipeline of health care service professionals.

Please don't hesitate to contact me at (916) 576-4212, or email at elaine.yamaguchi@dca.ca.gov.

Sincerely,

Elaine G. Yamaguchi

ELAINE G. YAMAGUCHI
Executive Officer

CC: Members, Board of Vocational Nursing and Psychiatric Technicians
Ms. Kimberley Kirchmeyer, Director, California Department of Consumer Affairs
Dr. Philip Dickison, Chief Executive Officer, National Council of State Boards of Nursing

Exhibit D

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

360 DEGREE EDUCATION, LLC, d/b/a Cortiva Institute and THE COALITION FOR CAREER SCHOOLS, Plaintiffs, v. U.S. DEPARTMENT OF EDUCATION; and SECRETARY MIGUEL A. CARDONA, in his official capacity as Secretary of the Department of Education, Defendants.	Case No. _____

DECLARATION OF NINA CYRENNE

I, Nina Cyrenne, do declare under penalty of perjury and pursuant to 28 U.S.C. § 1746, that the following is true and accurate to the best of my information and belief:

1. I am the Executive Vice President of Finance at Pivot Point International, Inc. (PPI), an Illinois Corporation. I have been at PPI for over a year.

2. PPI is a family-owned business that was originally founded in 1962 by Leo Passage.

3. Since its founding, PPI has worked with proprietary institutions and community colleges to develop educational programs for the preparation and training of students in cosmetology, barbering, esthetics, and nails.

4. PPI provides a digital educational platform to career schools for the delivery of instructional course content. PPI also manufactures mannequins and practice aids as well as

physical textbooks and kits, which are provided to students to develop their skills and to complete required coursework and obtain skill mastery.

5. In addition to core instructional content, PPI develops course materials that train students – and educators – on topics such as financial literacy, customer service, emotional intelligence, and the complexities of running a business and being a successful entrepreneur. We also curate and publish such content from third-party providers. In our experience, this additional course material provides students with skills and tools that help them achieve success faster and over the long term.

6. It is critical for PPI to partner with career colleges because of their ability to remain nimble and flexible with market and industry trends and developments. Cosmetology is a trend-driven industry and career colleges are able to stay on top of those changes.

7. PPI is very concerned about the devasting impact of the Department's revisions to the 150% Rule. In PPI's experience, State requirements lag behind significant developments and trends in the industry and, therefore, often fall short of employer demands and expectations as well as student needs.

8. Our industry is also driven by a focus on consumer safety, which is reflected in State licensure laws but often evolves more quickly as well.

9. The Department's regulatory change will have a significant impact on PPI. Because schools will have to reduce hours, we expect that there will be less opportunity to offer the kinds of courses that respond to market demands and that are crucial to students' career success, beyond the basic techniques required by licensure exams.

10. The hours reduction will especially impact financial literacy coursework and the "running a business" aspect of careers in cosmetology, barbering, esthetics, and nails. It is our fear

that the lack of these skills will impact students' ability to succeed and thrive in a competitive industry.

11. For PPI, we are concerned that the rule change will result in a loss of revenue and reduced internal budgetary flexibility – for PPI and for schools – for the research and development of new products and services, the expansion of distance education-based offerings, and the ability to meet changing market-driven educational needs. In addition, the rule change would have significant downstream impacts on third-party services we use from other technology companies and content providers for the development of our platform and educational content, as well as third-party suppliers of raw materials and finished goods for our manufacturing and distribution of student training kits.

Executed this 31st day of May, 2024.

DocuSigned by:
Nina Cyrenne
A96FE73634434B1...

Nina Cyrenne

Exhibit E

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

360 DEGREE EDUCATION, LLC, d/b/a Cortiva Institute and THE COALITION FOR CAREER SCHOOLS, Plaintiffs, v. U.S. DEPARTMENT OF EDUCATION; and SECRETARY MIGUEL A. CARDONA, in his official capacity as Secretary of the Department of Education, Defendants.	Case No. _____

DECLARATION OF MICHAEL ALEXANDER

I, Michael Alexander, do declare under penalty of perjury and pursuant to 28 U.S.C. § 1746, that the following is true and accurate to the best of my information and belief:

1. I am the Chief Executive Officer of Borboleta Beauty, a Utah Corporation. I have worked at Borboleta for approximately one year.

2. Borboleta Beauty collaborates with career colleges to provide world-class eye lash education and lash kits designed to enhance the careers of students.

3. Borboleta Beauty actively supports the employment of students from career colleges by offering job placements and networking opportunities.

4. Currently, Borboleta Beauty has multiple employees who hold licensures that they earned from career colleges and works with numerous independent contractors who also hold

licensures earned at career colleges. We are very pleased with these individuals' preparation for their work at Borboleta Beauty and their ongoing commitment to the mission of the company.

5. Borboleta Beauty is also in the process of opening a lash studio, allowing us to support new professionals in developing a long-term, financially rewarding and fulfilling career in lashing. The purpose of this effort is to help bridge the gap between education and employment, ensuring that graduates have the tools and connections needed to succeed in the beauty industry.

6. Working with career colleges is crucial to the success of Borboleta Beauty. Our partnerships with institutions allow Borboleta Beauty to reach and support aspiring beauty professionals and enable us to offer high-quality education and resources, which are essential for developing skilled lash artists in a competitive marketplace.

7. Indeed, our partnerships with career schools help us maintain our reputation as a leader in the lash industry by contributing to the growth and success of future professionals.

8. The U.S. Department of Education's Final Rule rescinding the 150% Rule will significantly impact Borboleta Beauty. Working with career colleges is a core part of our business, and the regulation limiting the program length to the state minimum requirements will have serious implications for Borboleta Beauty.

9. One of the potential impacts of the Final Rule is that schools that are required to reduce their hours will remove lashing education from their curriculum.

10. If schools are unable to offer lashing programs to future professionals while they are in school, we will not only be affected by the decrease in revenue from the schools we partner with, but it will also hinder our ability to make lasting connections with students, which is crucial in turning them into lifetime partners and professionals with the highest quality skills and networks.

11. As the Chief Executive Officer for Borboleta Beauty, I am very concerned about the impact of the Final Rule. The Department's actions will have a serious impact on our career school partners and on Borboleta Beauty. The financial implications for our company could be very devastating, as it would disrupt a vital part of our business model and revenue stream.

Executed this 31st day of May, 2024.

DocuSigned by:
Michael Alexander
702407CEBD734B9...

Michael Alexander

Exhibit F

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

360 DEGREE EDUCATION, LLC, d/b/a Cortiva Institute; and THE COALITION FOR CAREER SCHOOLS, Plaintiffs, Plaintiffs, v. DEPARTMENT OF EDUCATION; and SECRETARY MIGUEL A. CARDONA, in his official capacity as Secretary of the Department of Education, Defendants.	Case No. _____ **Declaration of James Black**

I, James Black, do hereby declare and state as follows:

BACKGROUND

1. I make this declaration in support of 360 Degree Education, LLC d/b/a Cortiva Institute ("Cortiva")'s Motion for Preliminary Injunction and Temporary Restraining Order. This declaration is based upon my personal knowledge and experience. I could and would competently testify to its contents if called to do so.

2. I am the Corporate Director of Education at Cortiva, which has a campus located in Arlington, Texas at 808 West Interstate 20, Suite 100, Arlington, Texas 76017. I began working at Cortiva in 2019 and have worked in career education and the proprietary sector for 21 years.

3. Given my position as Cortiva's Director of Education, I am familiar with the educational needs and demands of the massage therapy industry generally and with Cortiva's programs and students specifically.

4. In my role as Director of Education, I am responsible for development and execution of education curriculum in compliance with industry standards, training and supervision of faculty, oversee spa and salon operations and education of salon and spa procedures, oversee all continuing education programs. I have developed a keen understanding of the issues and implications of the U.S. Department of Education (the "Department")'s October 31, 2023 final rule regarding changes to the administration of loans under Title IV of the HEA. *See* 88 Fed. Reg. 74568 (October 31, 2023) (the "Final Rule"). As a result, I am qualified to provide a written declaration regarding the impact of the U.S. Department of Education (the "Department")'s change to the 150% Rule on Cortiva.

5. The Department's changes to the 150% Rule will require a reduced number of hours in Texas, and Cortiva will have to make significant adjustments to the Professional Massage Therapy ("PMT") Program to meet the current State minimum hours requirements.

6. The Department's new regulations—effective July 1, 2024—will impact the career readiness and the initial preparedness of Cortiva's graduates in a manner that could lead to long-term negative effects on graduates' earnings and career success.

7. The current PMT Program is a 24 credit-hour program, which converts to 600 instructional clock hours and which is within the 500–750 hour range created by Texas' 500-hour minimum for licensure as a massage therapist and the Department's long-standing 150% Rule. The PMT Program most recently had its accreditation renewed in December 2022. *See* Ex. A (Dec. 2, 2022 Letter from the Accrediting Commission of Career Schools and Colleges).

8. While the core of the academics associated with the PMT Program will need to remain the same—to prepare graduates for the required certification exam—other important aspects of the PMT Program will have to change.

9. The Department's regulations will necessitate that Cortiva cut 100 hours from the PMT Program, requiring Cortiva to cut the following courses:

a. **15 Hours Reduction from Anatomy and Physiology Course** – Reducing hours in body systems would adversely affect students' understanding of the body's systems and how they are affected by massage therapy.

b. **25 Hour Reduction from Professional Ethics and Business Course** – Reducing hours in this area would affect students' understanding of complex reasoning and decision-making skills regarding the industry and business of massage therapy.

c. **60 Hour Reduction from Massage Techniques Education from Clinical Assessment and Therapies and Allied Modalities** – Reducing hours would result in either cutting back training areas of advanced stretching to just basic techniques or eliminating critical modalities, such as lymphatic drainage, myofascial techniques, and structural bodywork hours altogether.

10. The PMT Program has start dates on July 1, 2024 and July 15, 2024. As a result, Cortiva will be negatively impacted by the new regulations immediately upon their effective date.

AUTHENTICATION OF DOCUMENTS

11. Attached as Exhibit A is a true and accurate copy of a letter sent by the Accrediting Commission of Career Schools and Colleges on December 7, 2022.

Per 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this 30th day of May, 2024.

James R Black

James Black

Exhibit A

ACCSC
Accrediting Commission of Career Schools and Colleges

2101 Wilson Boulevard, Suite 302
Arlington, Virginia 22201
703.247.4212
703.247.4533 fax
www.accsc.org

December 7, 2022

ELECTRONIC DELIVERY
Nicole.green@cortiva,edu

Nicole Green
Campus Director
Cortiva Institute
808 W. I-20, Suite 100
Arlington, Texas 76017

School #B072471

Dear Ms. Green:

At the November 2022 meeting, the Accrediting Commission of Career Schools and Colleges ("ACCSC" or "the Commission") considered the Application for Renewal of Accreditation submitted by Cortiva Institute located in Arlington, Texas. Upon review of the September 27, 2022 On-site Evaluation and the school's response to that report, the Commission voted to grant Cortiva Institute **Renewal of Accreditation**. The Commission's action renews the school's accreditation for a period of five (5) years going forward from February 2021.[1]

Included with this letter is an ACCSC Approved Program Enclosure as documentation of the school's approved programs. Although ACCSC accreditation is institutional in nature, all programs offered by the school must be approved by the Commission. Cortiva Institute will find the Commission's requirements for the addition of new programs and modifications to existing programs in the *Standards of Accreditation*.

In accordance with this action, the Commission is enclosing a copy of the school's Certificate of Accreditation. Through the renewal of accreditation, Cortiva Institute has continued its partnership with other educators who are committed to providing programs of quality and to conducting their affairs with integrity. The Commission is confident that the school will take this responsibility seriously with consideration for the many other ACCSC-accredited institutions that have embraced accreditation as a means to enhance student learning and achieve educational goals.

The Commission expects that the school will adhere to the *Standards of Accreditation* on an on-going basis and as revisions are approved and disseminated. Please consult regularly the ACCSC website for updates, important due dates, initiatives, and special events planned for the benefit of the Commission's accredited institutions as well as instructions for the preparation and submission of the Annual Report, sustaining fees, and annual audit of the school's financial statements.

For further assistance or additional information, please contact Zachary Hansen at 703.247.4517 or zhansen@accsc.org.

Sincerely,

Michale S. McComis, Ed.D.
Executive Director

c: Robert Slusher, robert.slusher@cortiva.edu – Cortiva Institute (*Sch #M001394*)
Neal Heller, corporatecomplianc@hi.edu
Nicole Vitez, NVitez@hi.edu

Encls.: ACCSC Approved Program Enclosure
ACCSC Certificate of Accreditation

[1] The Commission previously granted Cortiva Institute renewal of accreditation for five (5) years effective February 2016. Therefore, the school's accreditation is effective for a period of five (5) years going forward from February 2021.

ACCSC
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ACCREDITING COMMISSION OF CAREER SCHOOLS AND COLLEGES
APPROVED PROGRAM ENCLOSURE

CORTIVA INSTITUTE (SCHOOL #B072471)
ARLINGTON, TEXAS

DECEMBER 7, 2022

The Accrediting Commission of Career Schools and Colleges ("ACCSC") has approved the following program to be included within the school's scope of ACCSC accreditation:

NON-DEGREE PROGRAMS	INSTRUCTIONAL CLOCK HOURS*	QUARTER CREDIT HOURS	AWARD
Professional Massage Therapy	600	20	Diploma

*Non-degree programs may also include recognition of additional time for student preparation outside of class. Please refer to the Commission's letter of recognition where applicable.

This information is current as of the date of this letter. Please refer to *Section IV, Rules of Process and Procedure, Standards of Accreditation* for the processes and procedures required for the addition or

ACCSC

The Accrediting Commission of Career Schools and Colleges

recognizes

Cortiva Institute
Arlington, TX

as an accredited institution.

The Accrediting Commission of Career Schools and Colleges is listed by the U.S. Department of Education as a nationally recognized accrediting agency.

Michale S. McComis, Ed.D., Executive Director

February 2021 (5 years)
Effective Date

Exhibit G

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

360 DEGREE EDUCATION, LLC, d/b/a Cortiva Institute; and THE COALITION FOR CAREER SCHOOLS, Plaintiffs, Plaintiffs, v. DEPARTMENT OF EDUCATION; and SECRETARY MIGUEL A. CARDONA, in his official capacity as Secretary of the Department of Education, Defendants.	Case No. _____ **Declaration of Rene Lezcano**

I, Rene Lezcano, do hereby declare and state as follows:

BACKGROUND

1. I make this declaration in support of 360 Degree Education, LLC d/b/a Cortiva Institute ("Cortiva")'s Motion for Preliminary Injunction and Temporary Restraining Order. This declaration is based upon my personal knowledge and experience. I could and would competently testify to its contents if called to do so.

2. I am the Vice President of Campus Operations at Cortiva, which has a campus located in Arlington, Texas at 808 West Interstate 20, Suite 100, Arlington, Texas 76017.

3. I began working at Cortiva in 2010 and have worked in career education and the proprietary sector for 14 years.

4. Given my position as Cortiva's Vice President of Campus Operations, I am familiar with the educational needs of massage therapy students, the regulatory requirements for massage therapy educational programs, and with Cortiva's programs and students specifically.

5. In my role as Vice President of Campus Operations, I am responsible for overseeing and managing the day-to-day operations of the campuses.

6. In my role at Cortiva, I have developed a keen understanding of the issues and implications of the U.S. Department of Education (the "Department")'s October 31, 2023 final rule regarding changes to the administration of loans under Title IV of the HEA. *See* 88 Fed. Reg. 74568 (October 31, 2023) (the "Final Rule"). Thus, I am qualified to provide a written declaration regarding the impact of the Department's change to the 150% Rule on Cortiva with respect to the Texas Veterans Commission-State Approving Agency ("SAA").

7. Cortiva has been eligible for Title IV, Higher Education Act funds since 2014 (022796-01 Arlington) and Cortiva Institute Main – Tampa/St Petersburg (022796-00) has been eligible since 1986. Similarly, Cortiva has been approved by the SAA for G.I. Bill® benefits and other veterans' education benefits since April 27, 2017.

8. Cortiva's current Professional Massage Therapy ("PMT") Program is a 24-credit hour program, which converts to 600 hours of instructional clock hours.

9. I am aware that Texas has a 500-hour minimum requirement for massage therapy programs and, as a result of the Department's recent rulemaking, beginning on July 1, 2024, Cortiva will have to reduce the number of hours in the PMT Program if it wishes to continue the eligibility to participate in federal student aid programs under Title IV of the Higher Education Act of 1965, as amended.

10. On or about March 2024, the SAA informed Cortiva that its PMT Program will no longer qualify to receive G.I. Bill® benefits or any other veterans' education benefit. The PMT Program currently participates in Pell Grants and financial student aid programs under Title IV of the Higher Education Act of 1965, as amended. The SAA concluded that because Cortiva will no longer be able to participate in VA Benefits as a result of the regulatory changes to the 150% Rule, effective July 1, 2024, Cortiva's students in the PMT Program will not be able to receive G.I. Bill® benefits or any other veterans' education benefits. According to the SAA, the Johnny Isakson and Roe Veterans Health Care and Benefits Improvement Act of 2020 requires eligible programs at accredited schools to participate in Title IV programs in order to receive G.I. Bill® benefits and other veterans' education benefits.

11. The regulatory changes to the 150% Rule would render Cortiva's PMT Program ineligible to participate in the Pell Grant program, which was concerning to the SAA.

12. On March 25, 2024, Cortiva received VA Form 22-1998, signed by Juanis Union, indicating that all of Cortiva's programs except for the PMT Program were approved to be eligible for G.I. Bill® benefits and other veterans' education benefits by the SAA. *See* Ex. A (VA Form 22-1998).

13. The SAA stated that the 600-hour PMT Program cannot be approved for "greater than 500 HRS." *Id.* at 3.

14. According to the SAA, the PMT Program was not approved in anticipation of the regulatory changes to the 150% Rule becoming effective on July 1, 2024, resulting in a pre-emptive denial.

15. It is Cortiva's belief that the SAA should not have terminated GI benefits prior to July 1, 2024. Students who are veterans currently are unable to receive G.I. Bill® benefits and

other veterans' education benefits as a result of the regulatory changes to the 150% Rule which has not yet become effective.

AUTHENTICATION OF DOCUMENTS

16. Attached as Exhibit A is a true and accurate copy of VA Form 22-1998, signed by Juanis Union, on March 25, 2024.

Per 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this 30th day of May, 2024.

Rene Lezcano

Exhibit A

Name: CORTIVA INSTITUTE

Mailing Address

Address 1: 808 WEST I 20
Address 2:
Address 3:
City/State/Zip: ARLINGTON, TX 76017
County:
Foreign Postal Code:
State/Province:
Country: USA
Mil. Post Office:
Mil. Address:

Physical Address

Address 1: 808 WEST I 20
Address 2:
Address 3:
City/State/Zip: ARLINGTON, TX 76017
County:
Foreign Postal Code:
State/Province:
Country: USA
Mil. Post Office:
Mil. Address:

Phone:

Type	Number
Daytime	(682) 999-3150
Fax	(682) 999-3166

E-Mail: ERICA.BOULDIN@CORTIVA.EDU

Facility Code: 25146243

Status: Approved on 04/27/2017 **Revision Date:** 12/01/2023

App Law: 3 - Approved For All **Branch Location:** N **Preferred Provider:** N

Advanced Payments: N **VA Checks To:** Y **IHL Exempt:** N

Catalog:

Catalog	Years
1	2023-2024

Full Time Undergraduate: 18 **Full Time Modifier:** Clock **Graduate:**

Enrollment Limit:		**Enrollment Limit Indicator:**		**Course Limit:**	
Distance Learning:	N	**Cooperative:**	N	**Practical Training :**	N
Remedial Training :	N	**Accreditation:**	N	**Consortium:**	N
Air Agency Cert. Date:		**Title VI:**	Compliance Established	**VA-ONCE:**	Y
Reporting Fee Bar:	Eligible	**Pay List:**	Y	**Registered APP:**	N
National Approval:	N	**IHL with Flight:**	N	**Executive Order 13607:**	N
Federal Approval:	N	**Priority Enrollment:**	N	**Online Only:**	N
Independent Study:	N	**STEM:**	N		

Remarks: ORIGINAL APPROVAL EFF 4/27/17. VA-ONCE MOU EFF 07/29/17. FORMERLY: TEXAS CENTER FOR MASSAGE THERAPY ARLINGTON, NAMGE CHANGE EFF 02/21/19. EFT INFO EFF 9/12/19. TO SHOW AMENDED APPROVAL EFF 02/21/19- NAME CHANGE, EFT WAS NAN-EFT UPDATE IN FILE WAS MORE CURRENT THAN ONE IN FILE, CHANGED SCO, UPDATED VA ONCE, NOTIFIED DATABASE, CHANGED HOURS FOR PROGRAM, UPDATED EMAIL AND PHONES OF SCO AND SCHOOL. UPD 8794 DTD 9/1/2020.//UPDT APPVL DTD 5/6/24 EFF 12/1/23, UPDT 8794, NO EFT, EMAIL SENT RE 85/15 OUT OF COMPL

Main, Branch & Extension Campus Facility Codes

Campus Name	Facility Code	Campus Indicator
CORTIVA INSTITUTE	25146243	M

Designated Certifying Officials

Name	Title	Phone	Email	Status	Priority
SHAQUANA SMALL	CAMPUS DIRECTOR	682 999-3150	SHAQUANAS@CORTIVA.EDU	APRVD	Primary

Read Only Certifying Officials

Name	Title	Phone	Email	Status	Priority
ELIZABETH VELEZ	CORP COMPLIANCE	954 9622624	EVELEZ@HI.EDU	APRVD	Secondary

	OFFICER			
ENEIDA SANTIAGO	FINANCIAL AID MANAGER	954 9622624	ENEIDA.SANTIAGO@HI.EDU	APRVD Secondary
RENE LEZCANO	VICE PRESIDENT OF OPERATION	954 9262624	RENEL@CORTIVA.EDU	APRVD Secondary

NCD Programs

Code	Type	Description	Length	Mode	Full Time	Mode	Effective Date	Withdrawal
431	D	CERT Cosmetology Operator	1000	C	18	C	12/01/2023	

Remarks: PER APPVL DTD 03/06/2024 EFF 12/01/2023 56 QTR HRS

431	D	CERT Esthetician	750	C	18	C	12/01/2023	

Remarks: PER APPVL DTD 3/6/2024 EFF 12/01/2023 42.5 QTR HRS

431	D	CERT Manicurist	600	C	18	C	12/01/2023	

Remarks: PER APPVL DTD 3/6/2023 EFF 12/01/2023 34 QTR HRS

431	D	CERT Manicurist Esthetician	800	C	18	C	12/01/2023	

Remarks: PER APPVL DTD 03/06/2024 EFF 12/01/2023 46.5 QTR HRS

313	D	PROFESSIONAL MASSAGE THERAPY PROGRAM	600	C	18	C	04/27/2017	12/01/2023

Remarks: CHANGE IN LENGTH FROM 736 TO 600 EFFECTIVE 02/21/19. WD PER APPVL DTD 03/06/2024 EFF 12/01/2023 DUE TO SAA cannot approve greater than 500 HRS

JUANIS UNION Digitally signed by JUANIS UNION
Date: 2024.03.25 11:43:17 -05'00'

ELR or Designee Date