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To: David Fish, Executive Director, Legal and Regulatory Services, Department of Labor and Workforce Development

From: Althea D. Ford, NJBIA Vice President of Government Affairs

Date: October 6, 2023

RE: PRN 2023-077: DOL Rule Proposal Center for Occupational Employment Information: Private Career Schools; Minimum Acceptable Level of Performance

On behalf of our member companies that make NJBIA the largest, most impactful statewide association representing New Jersey businesses, I submit the following comments regarding the Department of Labor and Workforce Development's (Department) proposed amendments and new rules regarding private career schools and the minimum acceptable level of performance (PRN 2023-077).

We greatly appreciate the Department's efforts to implement P.L. 2022, C. 76, which addresses career-oriented programs at institutions of higher education, degree-granting proprietary institutions, and private career schools. We recognize that these programs do not all fall under the jurisdiction of one department or agency. Implementation of this law will differ, and as a result, students interfacing with career-oriented programs will have varied experiences depending on the rules and procedures codified by the department or agency of jurisdiction. This variation was codified in the initiating law and is evidenced in the differences between the Department's proposed rules governing career-oriented programs within its jurisdiction and the proposed rules for programs within the jurisdiction of the Division of Consumer Affairs or the Office of the Secretary of Higher Education.

It is with this understanding that we believe the proposed rules will both negatively and disproportionately impact learners attending programs at private career schools licensed under the Department.

P.L. 2022, c. 76 establishes three courses of action that the Department can take in response to a private career school that fails to meet the minimum acceptable level of performance: revoke, suspend or make conditional their certificate of approval. The Department's proposed rule at N.J.A.C. 12:41-2.4(g) applies the most severe course of action by requiring the denial of a private career school's renewal application if each instructional program does not meet the minimum acceptable level of performance. In contrast, the Department's proposed rules at N.J.A.C. 12:41-4.8(b) and N.J.A.C. 12:41-5.1(c) reiterate the courses of action available to the Department through P.L. 2022, c. 76: the revocation, suspension, or the placement of conditions upon the continued possession of the certificate of approval.

We contend that the intended aim of the legislation was to cease the continuation of poor-performing institutional programs, and not to deny the ability of private career schools to operate institutional programs that meet the quality standard.

Should the Department have to act against the private career school and not the individual program, the Department, under the language codified in P.L. 2022, c.76, can invoke the option to make the certificate of approval conditional and establish a process and timeline by which private career schools can cure the deficiencies that resulted in their failure to meet the minimum acceptable level of performance prior to taking action to deny, suspend or revoke the institution's certificate of approval. Utilizing this conditional strategy would allow private career schools to respond in a timely manner to avoid any negative action taken against their certificates, while permitting students enrolled in instructional programs that meet the minimum acceptable level of performance to continue their studies at their chosen institution.

The Department's Social Impact statement notes, "...private career schools will either meet the minimum acceptable level of performance (lowering tuition in order to do so when necessary) and become, or remain licensed, or they will not meet the minimum acceptable level of performance and not be licensed." What this statement fails to consider is the intersection between private career schools and the instructional programs they offer.

Private career schools are not single-program operators, but can offer several instructional programs, and each program will be evaluated based on the proposed rule's equation for minimum acceptable level of performance. Under the proposed rule, a private career school's certificate of approval will be denied or essentially revoked, if one of its institutional programs falls under the minimum acceptable level of performance, despite its other institutional programs meeting, or even exceeding, the standard. Such revocations will have significant social and economic implications for the students that are enrolled in the private career school's institutional programs that are meeting the standard, as it jeopardizes their ability to continue their programs of study at a licensed institution. The denial or revocation of a private career school's certificate of approval due to the inability of one instructional program to meet the quality standard does not protect students, but rather, creates alarm and confusion for those students enrolled in instructional programs that are meeting the identified standard.

Thank you for taking our comments into consideration. If you have any questions, I can be reached at aford@njbias.org.