SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made by and between Baker College ("Baker") (OPE ID: 00467300), and the United States Department of Education ("Department"). This Agreement is effective the latest date opposite the signatures below ("Effective Date").

RECITALS

A. Baker is a private institution participating in the federal student aid programs ("Title IV Program") authorized pursuant to Title IV of the Higher Education Act of 1965, as amended, 20 U.S.C. § 1070 *et seq.* ("HEA"). Baker offers associate, bachelor's, master's, and doctoral degrees on campuses in Michigan and online.

B. Under the HEA and its implementing regulations, a misrepresentation is defined as "[a]ny false, erroneous or misleading statement an eligible institution … makes directly or indirectly to a student, prospective student or any member of the public," including one that has "the likelihood or tendency to mislead under the circumstances." 34 C.F.R. § 668.71(c). A misrepresentation rises to the level of a "substantial misrepresentation" if the misrepresentation is about employability of an institution's graduates and is one "on which the person to whom it was made could reasonably be expected to rely, or has reasonably relied, to that person's detriment." *Id.* "Substantial misrepresentations are prohibited in all forms, including those made in any advertising, promotional materials, or in the marketing or sale of courses or programs of instruction offered by the institution." 34 C.F.R. § 668.71(b).

C. After an investigation, the Department identified the following representations that Baker made to students, prospective students, members of the public, and/or one of its accrediting agencies:

1. From June 2019 to April 2024, Baker published "Career Outcomes Rates" on its website, which it defined as "the percentage of graduates who are engaged in a career outcome" and, for part of that time, represented were "aligned with National Association of Colleges and Employers ("NACE") standards." Baker listed on those pages the rates of graduates that obtained full- and part-time employment, were serving in the U.S. Armed Forces, were participating in a program of volunteer service, and were enrolled in a program of continuing education. Baker's website stated that it "obtains graduate employment information from its recent graduates using the First Destination Survey." Baker displayed the number of total graduates alongside these rates; it did not disclose the number of survey respondents. It is the Department's position that Baker's Career Outcomes Rates are misleading because they give the impression that all of Baker's graduates are included in the Career Outcomes Rates and do not disclose how many students responded to the survey.

2. Between 2019 and 2023, Baker sent two different mass marketing emails to many prospective students; one representing that Baker had an overall 91.1% "Career Outcomes Rate" and another representing that Baker's Auto/Diesel Institute of Michigan program had a 95.9% "Career Outcomes Rate". Additionally, one email represented an average starting salary and the other listed employers where it represented that Baker's graduates found employment. Neither email defined the term "Career Outcomes Rate" or provided the breakdown of the categories listed on Baker's website that made up the Career Outcomes Rate. It is the Department's position that the emails are misleading because they give the impression that the "Career Outcomes Rate" represents the percent of graduates that obtained employment in a paid position, but the "Career Outcomes Rates" include unpaid options like continuing education without disclosing that fact in the emails themselves.

3. From June 2019 to April 2024, Baker published reports on its website containing representations that Baker's graduates "were hired" by certain employers. Fourteen of the employers that Baker represented had hired its graduates had actually hired those individuals before they enrolled at Baker. Although those fourteen employers did have Baker graduates working for them, it is the Department's position that the inclusion of those employers in a list of employers that Baker represented had hired its graduates created the impression that a Baker degree had an impact on the employer's decision to hire these individuals.

4. Baker's accrediting agency for culinary-related programs, American Culinary Federation Education Foundation Accreditation Commission (ACFEFAC), requires Baker to calculate, report, and publish employment rates each year for each of its culinary programs using a specific method. For five of its culinary programs over two years, Baker published employment rates that were not calculated in compliance with ACFEFAC's standards and were between 16 percentage points and 60 percentage points higher than was accurate. Baker published those inaccurate employment rates on its website.

5. Since at least 2019, Baker's website has published a "Median Yearly Income" and a "Median Salary for Executives" on most of its program pages. The salary figures were presented under the headings "Why Study [the Discipline]" and "Career Facts." Readers would have to click on a link to learn that the career facts were "drawn from the 'Occupational Handbook from the U.S. Department of Labor's Bureau of Labor Statistics'" and certain other sources. It is the Department's position that, under the circumstances in which those representations are presented, they appeared to be the salaries of Baker's graduates.

D. Pursuant to 34 C.F.R. § 668.71(a), the Secretary, via his designee, determined that Baker engaged in substantial misrepresentations related to the conduct described in Paragraph C and that those misrepresentations warranted seeking the imposition of a fine pursuant to 34 C.F.R. § 668 Subpart G. Under Subpart G, the Department would have identified the alleged violations that constitute the basis for the action and informed Baker of its right to request a hearing or provide written material indicating why the fine should not be imposed. *See* 34 C.F.R. § 668.84(b).

E. Baker cooperated with the Department's investigation and removed the representations in Paragraph C from its website.

F. Baker and the Department desire to resolve the matter without instituting administrative action, which could include but would not be limited to, the assessment of liabilities, a Subpart G fine action, or a limitation action.

TERMS AND CONDITIONS

1. As used in this Agreement, "Covered Conduct" shall constitute the representations identified in Paragraph C made on or before the Effective Date.

2. Baker will pay Two and a Half Million Dollars ($2,500,000.00) to resolve any potential adverse action that the Department believes it could pursue for the Covered Conduct (referred to herein as the "Settlement Payment"). The Department will classify the Settlement Payment as a fine.

3. Baker will pay the Settlement Payment in complete and total satisfaction for all potential fines, liabilities (except those retained by the Department in Paragraph 13 of this Agreement), and other potential administrative action related to the Covered Conduct.

4. Baker will pay the Settlement Payment through FEDWIRE on or before the expiration of ten business days following the Effective Date of this Agreement. Baker should include the billing number AAA-2024-1-016. Instructions for completing the electronic fund transfer message format are included on the attached FEDWIRE form. See Attachment A.

5. Baker agrees not to make misrepresentations, as that term is defined in 34 C.F.R. § 668.71, *et. seq.*, including but not limited to the Covered Conduct.

6. Baker agrees, within 14 business days of the Effective Date, to provide the Department with copies of all current advertising materials utilized by Baker that contain placement rates, incomes made by graduates or anyone working in a field related to a Baker program, or employers that hire Baker graduates. For purposes of this paragraph and Paragraph 7, "advertising materials" means copies of current website images, copies of marketing emails, copies of video or audio commercials, and copies of printed advertising literature to the extent such materials are created for broad dissemination. For purposes of this paragraph and Paragraph 7, Baker and the Department agree that individualized communications are excluded from the definition of advertising materials.

7. Baker agrees, every six months after the Effective Date for a period of three (3) years, to provide the Department with copies of all advertising materials (as defined in Paragraph 6 of this Agreement) utilized by Baker since the previous production to the Department that contain placement rates, incomes made by graduates or anyone working in a field related to a Baker program, or employers that hire Baker graduates.

8. Baker agrees to preserve all formal written complaints submitted to it by students and prospective students and any response by Baker provided to the complainant for a period of three (3) years after the record was created.

9. Baker agrees to provide a notice to all currently enrolled students informing them how to use the Department's feedback center to submit a complaint. Baker must take reasonable efforts to send this notice to students, either by electronic mail, U.S. mail first class, or other comparable method of delivery within fourteen (14) days after the Department approves the draft provided to it by Baker. After the initial notice, Baker shall provide the same such notice to all currently enrolled students annually for a period of three (3) years.

10. Baker agrees to provide a notice to all current employees who provide recruiting, admissions, counseling, or instructional services to students. Such notice will inform those employees how to use the FSA Tips email inbox to submit information about misconduct or violations. Baker must take reasonable efforts to send this notice to those employees, either by electronic mail, U.S. mail first class, or other comparable method of delivery within fourteen business (14) days after the Department approves the draft provided to it by Baker. After the initial notice, Baker shall provide the same such notice to that category of current employees annually for a period of three (3) years.

11. Baker agrees not to seek reimbursement or to recoup any portion of the Settlement Payment from any students or former students of Baker, or from any parent borrower; provided, however, that this paragraph 11 will not prejudice Baker's right to defend litigation or similar claims made by a student, a former student, or a parent borrower, including by filing a counterclaim.

12. The Department shall not assess any additional fine or civil penalty, establish any liabilities, except potentially those referenced in Paragraph 13 of this Agreement, or seek to recover or take any other adverse administrative action available under the HEA or its implementing regulations against Baker (together with its directors, employees, and agents) based on the Covered Conduct. This includes, but is not limited to, the Department's agreement that it shall not take any administrative action to convert Baker's Program Participation Agreement into a Provisional Program Participation Agreement based on the Covered Conduct, nor will the Department use the Covered Conduct as a basis for any limitation associated with Baker's future application for recertification. Accordingly, Baker acknowledges that no right to appeal or further action exists under 34 C.F.R. part 668 subpart G, subpart H, or otherwise relating to the Settlement Payment or the Covered Conduct.

13. The Department releases and discharges Baker (together with its directors, employees, and agents) from any potential fine or civil penalty, or any potential suspension, limitation, or termination of eligibility to participate in the Title IV Programs, as a result of a violation of 20 U.S.C. § 1094(c)(3) and/or 34 C.F.R. part 668, subpart F (§§ 668.71–668.79) or related provisions, that could be based on the Covered Conduct. The Department agrees that the Settlement Payment hereunder shall not constitute a loss of Federal funds including for purposes of 34 C.F.R. §§ 668.14(b)(18), 668.16(k), 668.174 and any successor or similar regulations. Notwithstanding any provision of this Agreement, this Agreement and release does not include any potential claim by the Department for liabilities resulting from recoupment from Baker arising from the Department's discharges of loans related to borrower defense to repayment applications submitted by student loan borrowers related to the Covered Conduct; provided, however, that that nothing in this Agreement shall preclude, limit or affect in any way Baker's right to dispute and/or challenge any decision by the Department to discharge loans related to such borrower defense to repayment applications and/or any effort by the Department to seek recoupment from Baker for any such liabilities.

14. Notwithstanding the foregoing, the Department may use the Covered Conduct to establish a pattern or practice of violations or the continuation of a pattern or practice of violations or to calculate the amount of any subsequent fine, without prejudice for Baker to dispute the conduct at that time and without regard for the statute of limitations for that dispute. This release does not preclude or affect any right of the Department or Baker to determine and ensure compliance with this Agreement.

15. The provisions of this Agreement do not bar, estop, or otherwise prevent the Department from taking any other action against Baker, any signatory to this Agreement, or any other individual employed by Baker except as described above. Further, for the avoidance of doubt, the provisions of this Agreement do not bar, estop, or otherwise prevent any other person, including any student or parent borrower, or governmental agency, from taking any action against Baker, any signatory to this Agreement, or any other individual employed by Baker.

16. Baker releases the Department (together with its agents and employees) from any claims, known and unknown, suspected and unsuspected, including claims for attorneys' fees, costs, and expenses of every kind and however denominated, that Baker has asserted or could assert against the Department (together with its agents and employees) concerning the Covered Conduct.

17. Baker neither admits nor denies the allegations, findings, and/or determinations described in this Agreement. This provision does not prevent Baker from defending against borrower defense claims as described in Paragraph 13 of this Agreement or actions pursued by third parties.

18. The Department and Baker will each bear their own costs in connection with this Agreement.

19. All signatories to this Agreement acknowledge that they have read this Agreement and have freely and voluntarily executed it after having consulted with counsel and received the advice of counsel as to its effect.

20. Neither the Department nor Baker will contest the enforceability of this Agreement in a future proceeding.

21. A material breach of this Agreement by Baker shall constitute a breach of the required fiduciary standard of care and diligence in administering the Title IV Programs, a breach of any program participation agreement in effect at the time of the breach, and cause for initiation of a 34 C.F.R. part 668 subpart G proceeding.

22. This Agreement sets forth the entire agreement and understanding between the Department and Baker relating to the subject matter herein and supersedes all prior or contemporaneous discussions, understandings, and agreements, whether oral or written, between them relating to the subject matter hereof.

23. This Agreement may be executed in two or more duplicate counterparts, each of which shall be treated as an original, but all of which together shall constitute one and the same instrument. The counterparts of this Agreement and any amendments hereto may be executed and delivered by facsimile, .pdf attachment, or electronic signature by either Department to Baker (or vice versa), and the Department and Baker may rely on the receipt of such document so executed and delivered by facsimile or other electronic method as if the original had been received.

24. The Department and Baker warrant that their undersigned representatives are fully authorized to sign this Agreement on their behalf.

FOR BAKER COLLEGE

[redacted]

Denise A. Bannan, Ph.D.
Chair for the Board of Directors for Baker College

1/3/2025
Date

FOR THE UNITED STATES DEPARTMENT OF EDUCATION:

[redacted]

Susan D. Crim
Director, Administrative Actions and Appeals Service Group

1/7/2025
Date