REPRESENTING BEAUTY & WELLNESS EDUCATION

SINCE 1924

American Association of Cosmetology Schools
U.S. Department of Education Issues – May 2022

BACKGROUND

- AACS is a private, non-profit trade association founded in 1924 and is the sole national voice for state-licensed, accredited postsecondary institutions that educate students for state-licensed occupations in the beauty and wellness industry.

- Our graduates must pass a state licensing exam to work in the occupation and work at spas, salons, and other businesses as cosmetologists, estheticians, barbers, massage therapists, and entrepreneurs. Our schools are located throughout the United States and are mostly owned and operated by proud small business owners.

- Private, for-profit cosmetology schools in the United States produce more than 78% of the skilled graduates that are needed for employment in the thriving beauty and wellness industry. Our schools are state licensed and accredited, and most participate in the Title IV federal student aid programs.

- We are extremely concerned about certain proposals put forward during the Institutional and Programmatic Eligibility rulemaking that could significantly curtail access by our students, mostly women, to cosmetology-related programs and that threaten to put at least 41% of our schools out of business over the next few years.

Programs: Each school is different, however common programs offered by our schools include:

- *Cosmetology*: full cosmetology program generally covers hair styling, skin-care, nail care and make-up
- *Barbering*: preparing students to become licensed barbers
- *Massage Therapy*: preparing students to become licensed massage therapists
- *Esthetics*: study of applying make-up and performing facials, massages, waxing and reflexology
- *Nail Technology*: study of the art of nail art, design, tips, forms, wraps and gels
- *Electrolysis*: medically recognized permanent hair removal method for face and body
- *Teacher Training*: program of instruction to prepare a cosmetologist to teach future cosmetologists

Our Students: Most of our students are age 25 or above, independent of any parental financial support, and many have families. Our student population is: 89% female, 17% Latino, and 15% Black. We have a higher than average percentage of LGBTQ identified students. Many have tried traditional postsecondary school, without success.

Our Graduation Rates are Strong. Our average graduation rate is 71.6%, which compares extremely favorably to graduation rates at community colleges that offer cosmetology related programs. *This is reflected in the fact that our schools generate 78% of the completers for all cosmetology programs in higher education, with community colleges producing only 20% of the completers.*

Our Costs are Low: We are proud of the role our member schools serve to provide opportunity to individuals to gain an affordable education that gives them workforce relevant skills in a dynamic segment of our economy. Our average program cost for a cosmetology program is $15,953. 64% of our students receive some amount of Title IV financial aid (Pell Grant or loan). Our members' average 90/10 rate is 79%, well below the 90% regulatory threshold.

Our Employment Rates are Strong and Our Graduate Debt is Low: Our average placement rate is 71% as tracked by our accreditor. Our graduates have an average of $8,936 in median loan debt with an average monthly debt service payment of $59/month. Our graduates earn an annual average salary of $25,000 based on the Department's most recent data, but that earnings data does not reflect what can be significant unreported tip income for spa and salon service workers, unreported self-employment income, or part-time worker status. In addition, graduate earnings tend to be lower at the start of a cosmetology industry career, and as the graduate builds a client base, earnings increase. Measuring graduate earnings approximately 2.5 years after graduation (as proposed in the Department's Gainful Employment proposal) is not a true reflection of the return on investment to cosmetology school graduates.

Employment demand is strong and growing. Students are trained in skills directly tied to employer needs:

- 53,000 of licensed barbers were employed in 2020, with an 18% Bureau of Labor Statistics growth projection through 2030.
- 569,600 licensed cosmetologists (including hair) were employed in 2020, with a 19% growth projection through 2030.
- 123,000 licensed manicurists were employed in 2020, with a 33% growth projection through 2030.
- 144,600 massage therapists were employed in 2020, with a 32% growth projection through 2030.

- 68,700 licensed skin care specialists were employed in 2020, with a 29% growth projection through 2030.

EMPLOYMENT PICTURE
(Economic Snapshot of the Salon Industry, Professional Beauty Association, October 2021)

• The salon industry was a vibrant and growing component of the U.S. economy prior to the coronavirus pandemic, with more than 1.2 million total establishments and annual sales of more than $65 billion. We expect the industry to rebound strongly.

Salon Establishments With Payroll Employees: 109,192 (2020) with 2019 Sales of $34.5 Billion

Non-Employer Salon Establishments**:** 1,123,045 (2018) with 2018 Sales of $30.6 Billion

("Non-Employer" is a term used by PBA to reflect non-W-2 status of graduates who are self-employed)

• The salon and spa industry registered steady growth over the last decade (2008 – 2018), *with the strongest gains seen in the non-employer (self-employed) sector*. The number of non-employer salon and spa establishments increased *36%* in the last decade, while their sales jumped 63%. In comparison, the number of employment-based salon and spa establishments increased 17% over the last decade, with their sales rising 52%.

One in Three Salon-Industry Professionals are Self-Employed

• Nearly 1.1 million professionals worked in personal appearance occupations in the United States in 2020, on average during the entire year. Individuals in these occupations had a much higher rate of self-employment, as compared to the overall workforce.

• Thirty-three percent of all individuals in personal appearance occupations were self-employed. In comparison, only 6% of the overall U.S. workforce was self-employed in 2020.

• Of the 646,000 Hairdressers, Hairstylists and Cosmetologists employed in 2020, 38% (or 244,000) were self-employed.

• Thirty-six percent of Barbers were self-employed in 2020, while 21% of individuals in the Miscellaneous Personal Appearance Worker category were self-employed.

The Salon Industry Provides Career Opportunities for Individuals of All Backgrounds

- The nation's salon and spa industry provides first jobs and career opportunities for individuals of all backgrounds, *and has a broader representation of women and minorities than the overall U.S. workforce*.
- 83% of individuals in personal appearance occupations are women, compared to 47% of employed individuals in the overall U.S. workforce.
- 14% of individuals in personal appearance occupations are Black or African American, compared to 12% of the overall U.S. workforce.
- 21% of individuals in personal appearance occupations are Asian, compared to just 6% of the overall U.S. workforce.
- 16% of individuals in personal appearance occupations are of Hispanic origin, compared to the national average of 18%.

The Salon Industry Provides a Path to Ownership Opportunities

• Not only do salons and spas provide employment opportunities for individuals of all backgrounds, they also give individuals the experience to own businesses of their own.

• Fifty-nine percent of all employment-based salon businesses are owned by women, compared to just 21% of businesses in the overall private sector.

• Thirty-nine percent of employment-based businesses in the salon industry are owned by minorities, versus just 19% of total private sector businesses.

KEY RULEMAKING ISSUES

1. Title IV Certification – 34 C.F.R. 668.14(b)(26)

Currently, under 34 C.F.R. 668.14(b)(26), Title IV participating cosmetology schools are permitted to offer programs up to the *greater of* 150% of the minimum hours required for training in a recognized occupation as established by the State, OR 100% of the minimum number of clock hours as established in a State adjacent to the State in which the institution is located.

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The Department's most recent proposal would reduce Title IV program eligibility from 150% of the state minimum program length requirement to *the lesser of* 100% of the state minimum or, where more than half the states establish minimum training hours for the licensed occupation, the median of the hours required in those states for that program.

Problem: The impact of these changes will be to make less federal aid available to students receiving necessary training for state-regulated cosmetology professions. Specifically, where the median hours are less than a State's established hours, students will not be able to receive federal aid to cover the full cost of their program based on mandated State program length, and are likely to fail to complete at higher rates as a result of the proposed regulatory change.

In addition, many cosmetology schools offer in-demand short-term training programs such as message therapy and full specialist that, due to the current 150% limit, are able to be eligible for federal aid. For short-term programs with State minimum or state median hours below 600, the Department's proposal would mean students would not be able to receive any aid for those short-term programs. The result would be that students in need of financial assistance would be forced to choose longer and more expensive programs that are Title IV eligible. Forcing students away from shorter-term, affordable programs leading to in-demand occupations and toward longer term, more expensive programs is not sound policy.

An Example: Florida regulates a Full Specialist by requiring 400 hours of training for licensure. Cosmetology schools include in this training the following curriculum: Advanced nail enhancement; Nail art and design; Gel nails; Acrylic nails; Encapsulations; Spa manicures; Spa pedicures; Natural nail care; Electric filing; Polishing techniques; Safety/sanitation/disinfection; Standard facials; European facials; Facial waxing; Skin care analysis; Color analysis; Skin tone analysis; Extractions; Back facials; LED light therapy; Microdermabrasion; Ultrasonic skin spatula; Body waxing; Lactic, Glycolic, Salicylic peels; Lash/eyebrow tinting; Brazilian waxing (elective); Health and wellness/aromatherapy; Spa coordination; Product knowledge; Product application; Diseases & disorders of the skin; Sanitation/disinfection; Business training; interview tips; Professionalism: Resume creation; and Marketing and Social Media.

This short-term training prepares graduates for a variety of employment options in spas and salons for which there is growing and steady demand (33% growth rate through 2030). The Department's proposal would mean students could no longer receive financial assistance for this program.

Similarly, massage therapy requires a minimum of 500 clock hours to be licensed in Florida. Without the 150% rule, students will be ineligible for federal loans to complete these programs although the projected growth rate is 32%. These students would be forced into longer-term programs that are eligible for Title IV aid.

Solutions:

1. The Department could lessen the immediate impact of reducing Title IV aid for state-mandated program lengths by putting in place a 3-5 year transition period to allow states to reduce program lengths through state legislatures and ensure that students have aid to cover their entire state-mandated program length;

2. The Department could soften the impact of these changes by permitting schools to offer Title IV aid for *the greater of* 100% of the state minimum program length or the median of the program length in other states that regulate the length of that program; and

3. The Department could retain the current 150% threshold just for short-term programs (less than 600 hours) to enable students to access aid for short-term programs that lead to licensed occupations. This would retain access to shorter, less expensive, and in-demand programs and avoid students having to take longer programs to receive federal support. This access to funding is even more critical now, given that in the America COMPETES Act, the House has proposed terminating completely Direct Loan authority for short-term programs and would exclude proprietary institution students from accessing Pell Grants for programs from 150-600 hours.

2. Gainful Employment - Debt-to-Earnings Rate.

ED proposes a revived Gainful Employment Rule ("GE Rule") framework based on some aspects of the 2014 GE Rule. D/E Rate earnings data would come from a "federal agency," and may include data from the Treasury Department (including the Internal Revenue Service), the Social Security Administration (SSA), the Department of Health and Human Services (HHS), and/or the Census Bureau. The Department's most recent proposal entirely removes the prior Alternate Earnings Appeal which permitted institutions to gather graduate earnings data from surveys to demonstrate that federal earnings data was not reflective of true earnings.

Problem: In the 2014 GE Rule, the Department acknowledged that income for cosmetology related programs was underreported by as much as 50%.

In *AACS vs. DeVos* (D.C. Dist. 2017), the Court concluded that the Department violated the APA by failing to adequately address the issue of unreported income. In that case, the Department did not dispute that SSA data was a significant problem for cosmetology programs. Illegality of graduates failing to report income was found irrelevant by the Court to the flaws in the data. The Court found that the Alternate Earnings Appeal was an alternative means of measuring earnings data that was responsive to the problem, but was constructed in a manner that was unfeasible for certain programs to utilize the appeal. The Court ordered removal of barriers to appeal (namely, the requirement that at all graduates in a cohort report alternate earnings) to uphold the legality of the rule. As cited by the Court, the Department explicitly acknowledged that "about half of earnings in service occupations such as cosmetology" are made up of tips, and that many people in the industry are self-employed. *See* 79 Fed. Reg. at 64,955. A report by Stanford professor Dr. Eric Bettinger, which was submitted to the Department during the notice-and-comment period, found that both tip income and self-employment income are, on average, underreported by around 60%. *See* J.A. 594. AACS cited the House Budget Committee testimony of Russell George, Treasury Inspector General of the Tax Administration, wherein Mr. George states that "self-employed individuals who formally operate . . . businesses . . . are estimated to report only about 68 percent of their income for tax purposes" and "self-employed individuals operating businesses on a cash basis report just 19 percent of their income to the IRS." Brodie Decl. at 1258. The Court found that "the income gap phenomenon is a significant problem."
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<u>Problem</u>: Earnings pulled from federal agency databases, including SSA, do not account for unreported tip income or under-reporting by self-employed individuals which is a real and proven issue. Further, 89% of our graduates are female, and many work part time to supplement family income. In addition, increasingly our graduates start their own businesses and become self-employed, and IRS has found that self-employment income tends to be under reported. The Department's proposal removes the Alternate Earnings Appeal and chooses to entirely ignore the reality of under-reporting. As a result of this flawed earnings data, GE programs offered by AACS schools will be more likely to fail D/E rates, and the newly proposed Earnings Threshold metric discussed below, based on the earnings component not being reasonably adjusted for these issues.

<u>Solutions</u>:

1. The Department could include Bureau of Labor Statistics earnings by occupation aligned with cosmetology programs as an acceptable source of "federal agency" earnings data. BLS is a federal agency database. BLS earnings better reflect earnings at the occupational level for cosmetology-related programs. During the 2014 GE Rule, a commenter suggested using data

gathered by BLS, which relies on population surveys rather than formally reported income. *See* J.A. 597, 785; Brodie Decl. at 1193–94. According to Dr. Bettinger, this data would more accurately capture the earnings of, among others, cosmetology-school graduates, because, unlike SSA data, it takes unreported income into account. *See* Brodie Decl. at 684–85, 1193–94. "[T]hese adjustments would significantly augment the SSA aggregate earnings reported for these occupations, increasing the median earnings by 19 percent and the mean earnings by 24 percent." 79 Fed. Reg. at 64,890, 64,955;

2. The Department could recognize the reality of tip-based industries, and use a proxy amount to account for unreported earnings that would be added to federal agency earnings data for cosmetology programs. Between IRS studies on this issue and the Alternate Earnings Appeal data in possession of the Department from the 2014 GE Rule, there is real and reliable data available to the Department on which to base a proxy amount. Although adding a proxy "plus up" to earnings data for cosmetology programs would not lead to a perfect result, the D/E rate proposed by the Department is, itself, a proxy for what Congress intended by the terms "gainful employment";

3. The Department could also, as in the 2014 GE Rule, allow for use of earnings data from state wage databases which better reflect individual graduate earnings;

4. The Department could restore the Alternate Earnings Appeal to allow cosmetology schools to submit actual graduate earnings data;

5. The Department could exclude from the GE rule small institutions with revenues of $8 million or below according to the SBA definition of a small business that prepare students for in-demand occupations like cosmetology-related programs;

6. The Department could exclude from the GE rule programs with very low debt, below $10,000 in median debt; and

7. The Department could gather information from cosmetology schools on the part-time worker status of graduates in the measured GE cohort to annualize earnings.

3. Gainful Employment - Earnings Threshold Measure.

In the last session of the Department's Institutional and Programmatic Eligibility Rulemaking, the Department put on the table an entirely new GE metric never seen before: the Earnings Threshold metric. If a GE program offered by a cosmetology school passes the D/E Rate metric, it would still become Title IV ineligible if it failed a new Earnings Threshold metric.

Specifically, as proposed by the Department, under this new measure the Earnings Threshold is calculated based on data from the Census Bureau and compares GE cohort median earnings against the median earnings for a working adult aged 25-34 with only a high school diploma (or GED)— **(1)** In the State in which the institution is located; or **(2)** Nationally, if fewer than 50 percent of the students at the institution are located in the State where the institution is located. If the Secretary determines that a GE program is ineligible (based on failing both the D/E rate and the Earnings Threshold), the program's participation in the title IV, HEA programs ends.

Problem: The Earnings Threshold metric as proposed would render at least 41% of cosmetology-related programs Title IV ineligible. The use of "the median earnings for a working adult aged 25-34 with only a high school diploma (or GED)" includes nearly a decade of earnings (from 7 to 16 years after HS completion), which is estimated to be approximately $35,000. This earnings threshold is compared against a cosmetology graduate's earning 2-3 years after completion of a program. Comparing a working adult's earnings 7-16 years after high school to the earnings of a cosmetology program graduate 2-3 years after entering the workforce is not a fair or rational comparison.

Solutions:

1. The Department should strike the new Earnings Threshold measure based on unfairness and flaws in measuring recent graduate earnings against an earnings threshold that does not reflect recent graduates or local earnings differences. The concept is not well developed and would have a devastating impact on cosmetology school programs;

2. The Department could use a different earnings threshold that better reflects adults with a high school diploma at a period post-graduation that aligns with the earnings measurement period in the D/E Rate portion of the GE Rule. For example, the Department could use earnings from students who graduated from a high school cosmetology program and compare earnings from those students with graduates from cosmetology school programs to determine the earnings premium gained by attending a cosmetology school;

3. The Department could use as the Earnings Threshold salary levels included in the BLS earnings data base or include a proxy for unreported tip or self-employment income that would be added to earnings data used to calculate the Earnings Threshold metric;

4. The Department could exclude from consequences of the Earnings Threshold measure cosmetology school programs that pass GE and have low CDRs indicating graduates' ability to manage debt;

5. The Department could restore the Alternate Earnings Appeal to allow cosmetology schools to submit actual graduate reported earnings data to challenge earnings used in calculating the Earnings Threshold;

6. The Department could require institutions to provide a disclosure to students prior to employment regarding working adult HS graduate earnings as compared to program earnings;

7. The Department could exclude programs with high licensure passage rates from the Earnings Threshold in acknowledgment that the programs are designed to lead to entry to the profession and licensure passage represents success in meeting this goal;

8. The Department could exclude from the GE rule small institutions with revenues of $8 million or below according to the SBA definition of a small business that prepare students for in-demand occupations like cosmetology-related programs;

9. The Department could exclude from the GE rule programs with very low debt, below $10,000 in median debt; and

10. The Department could gather information from cosmetology schools on the part-time worker status of graduates in the measured GE cohort to annualize earnings.