American Association of Cosmetology Schools

Representing Beauty & Wellness Education

AACS Advocate

Gainful Employment Rule

The Gainful Employment Rule is Fatally Flawed and Destroys Cosmetology School Programs

The Department has published a Notice of Proposed Rulemaking (NPRM) open for public comment through midnight on June 20, 2023. The NPRM would establish a new Gainful Employment Rule (GE Rule) framework based on some aspects of a former 2014 GE Rule but that now includes harmful changes that will lead to closure of nearly all cosmetology-related educational programs that prepare mostly female graduates to become state licensed to work in the thriving spa and salon business, or to become independent entrepreneurs offering their services to the public.

The Department has not solved, *but only made worse*, serious flaws in a Debt to Earnings (D/E) rate that uses earnings data known to be inaccurate for these program graduates to measure whether a cosmetology program is a “quality” program. Specifically, the D/E rate metric will use earnings data 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.
This data does not accurately reflect the flexible schedules worked by many majority female cosmetology school graduates, and for which such data is known to be a flawed measure of income due to variances in tip reporting and the impact of graduates filing as independent businesses.

Significantly, the Department has also removed a prior appeal process that would have allowed schools to appeal the earnings data. The Department has also chosen to add a new, independent GE metric – the Earnings Premium (EP) threshold – that each program must also pass that is based solely on the same flawed earnings as the D/E rate. The Department could not have proposed a more harmful GE rule for cosmetology programs. Programs offered by AACS member schools will be decimated by this second metric, with most programs being eliminated from students being able to use federal financial aid to attend. Because cosmetology schools are specialized in only offering cosmetology-related programs, the rule will eliminate not just programs, but schools. These schools generate 74% of the graduates who work in spas, salons, and as solo businesses in this field.

Our Ask: We ask our Congressional Representatives to support our institutions, our students, our employees and our business partners and urge the Department to (1) reinstate a fair and workable Alternate Earnings Appeal for cosmetology programs as it was established after AACS’s court challenge to the 2014 GE Rule and (2) strike down the Premium Earnings Metric entirely – or exempt cosmetology programs from its Title IV eligibility impact - because it is an unneeded supplement to the D/E rate, has not been thoroughly evaluated for its impact on cosmetology schools, and has a disproportionate impact on women and other students who choose these programs.

(1) Debt-to-Earnings Rate

<u>Problem</u>: D/E component of the GE Rule is based on flawed data - for both earnings and debt measurement.

- It is based on improper presumption regarding validity of earnings data from federal agencies for cosmetology school graduates.

- In AACS vs. DeVos (D.C. Dist. 2017), 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.
- 89% of graduates are female and many work flexible hours to supplement family income.
- *A large and growing proportion of cosmetology school graduates work as independent business owners and their reported annual income in early years is impacted by this tax status due to allowable deductions.

Problem: NPRM removes the Alternate Earnings Appeal contained in the last GE rule that would have allowed schools to demonstrate alternate earnings data to challenge initial D/E rates.

- In AACS vs. DeVos (D.C. Dist.2017), the Court ordered removal of barriers to appeal (namely, the requirement that all graduates in a cohort report alternate earnings) to uphold the legality of the rule.
- Results of prior earnings appeals data clearly demonstrate evidence of flawed earnings data.

Conclusion: As a result of this flawed data, GE programs offered by AACS schools will be more likely fail D/E rates that will result in a loss of Title IV eligibility.

(2) Earnings Premium Threshold Metric

If a GE program offered by a cosmetology school passes the D/E Rate, it would still become Title IV ineligible if it fails a new Earnings Threshold metric.

Problem: The Earnings Threshold metric relies on the same flawed graduate earnings data used in the D/E rate, and is based on an unfair and inaccurate comparison of earnings to those of high school graduates.

- Cosmetology program graduate earnings would be compared against "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 $25,000.
- This earnings threshold is compared against a cosmetology graduate's earning occurring 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.
- Many cosmetology graduates do not experience a substantial portion of their earnings potential 3 years after graduation from the program or operate after graduation as solo businesses that take allowable deductions when establishing a new business.

Conclusion: The Earnings Threshold metric as proposed would make most cosmetology-related programs Title IV ineligible (thereby putting most cosmetology schools out of business), yet does not fairly or accurately compare earnings of an adult with only a high school diploma to a cosmetology graduate.

CONCLUSION

The Gainful Employment framework included in the NPRM is detrimental to schools, students, employees and the industry as a whole. The revised D/E Rate and the newly established Premium Earnings Measure will result in an overwhelming majority of cosmetology schools losing Title IV eligibility, which in turn will lead to massive school closures. The Negotiated Rulemaking Process did not allow a representative from our industry to participate in the process and, therefore, our interests were not addressed. It cannot be understated that the proposed Gainful Employment framework will cripple the Beauty and Wellness industry.