

**Netting, Tom (Cnslt-DC)**

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**From:** Netting, Tom (Cnslt-DC)  
**Sent:** Wednesday, May 04, 2011 9:40 AM  
**To:** 'MEchols@omb.eop.gov'  
**Cc:** 'Anthony F. Fragomeni'; Christine Gordon  
**Subject:** URGENT Scheduling Request - RE: RIN# 1840-AD06

Dear Mrs. Echols,

I want to again thank you for your guidance during my initial outreach call with you on Monday, April 18th. As you may recall, I represent a number of higher education clients who are very interested in the pending publication of final regulations building off of a prior Notice of Proposed Rulemaking submitted and reviewed by OMB last year (RIN # 1840-AD02 ).

In light of today's posting on reginfo.gov, I am contacting you directly on behalf of the American Association of Cosmetology Schools (AACS) to request the opportunity to meet with the OIRA Administrator and other OIRA officials regarding the Department of Education's submission of final regulations on gainful employment (RIN# 1840-AD06).

AACS is the national trade association representing the interest of over 1,200 institutions of higher education providing students with the education and skills necessary to enter professional, rewarding careers in the \$9+ billion a year cosmetology industry. While part of the broader for-profit sector, our institutions are unique in several distinct ways:

- 1) **State Oversight & Regulation** -- Cosmetology institutions are more heavily regulated than other sectors of the higher education community. State Boards and Commissions, not the institutions themselves, determine program length and curriculum content and the states require graduates successful passage of an independently administered, state licensure examination in order to be enter the workforce.
- 2) **Unique Characteristics** -- While the cosmetology institution community is diverse, including smaller institutions, medium sized chains, and even larger groups of both private and franchised schools, they predominately measure program length in clock hours, rarely if ever offer programs other than those within the cosmetology arts and sciences, and a significant portion of the institution are classified as small businesses.
- 3) **Labor Market Demand** -- As noted by the Bureau of Labor Statistics service industry, and particularly cosmetology-related occupations, are predicted to grow at rates above average based upon their analysis for the period 2008-2018. Employers note demand for well- trained and licensed individuals to fill job vacancies now and into the future.

Given these unique characteristics, we are requesting a meeting with OIRA, to discuss the potentially devastating impact the regulations may have on our students and institutions. As part of our presentation, we hope to discuss:

- 1) **Lack of Department Impact Analysis on Cosmetology Schools** -- While the Department of Education has published data and analysis providing estimates on the impact the previously proposed regulations could have on institutions offering programs subject to the proposed regulatory definition, **none** of the data used included information related to cosmetology institutions and their program offerings. AACS' independent analysis of data provided by the Department of Education

5/10/2011

suggests that as many as 61% of cosmetology institutions programs could be either ineligible or placed in the "restricted" class of eligibility. Adding to this concern is the aforementioned limits on the program offerings of cosmetology schools, and the reality that these program eligibility statistics, if accurate, would likely result in institutional ineligibility, not merely program ineligibility.

2) **Small Business Administration Concerns** -- On two occasions the SBA's Office of Advocacy has submitted letters to the Department of Education noting their concerns with the proposed regulations. Many of the concerns highlighted in the letters are as a result of meetings AACS held with the SBA on behalf of our large population of institutions which are also classified as small businesses.

3) **Lack of Consistency with the Obama Administration's 2020 Educational Goals** -- One of the Obama Administration's top educational goals is for our nation to once again lead the world in postsecondary credentialed individuals. In order to achieve this goal, the Administration suggests that over 5 million individuals will need to be provided with the ability to complete the higher education and training goals that best meet their own individual career goals. If the proposed regulations are promulgated without revision, the ability to achieve this goal will be placed in serious jeopardy.

Please be in touch with me to schedule the meeting we are respectfully requesting at the earliest possible time. And thank you in advance for your prompt consideration and the opportunity to meet with the appropriate OIRA representatives on this vitally important regulation.

Tom E. Netting

Public Policy Consultant

Akerman Senterfitt, L.L.P.

**Tom E. Netting**

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# Presentation Outline for Office of Management and Budget Meeting

Tuesday, May 10, 2011 – 11:00 AM

## **Who We Are:**

Independent institutions providing quality education in a limited number of highly state-regulated clock hour programs (1-3 avg.) designed to provide those who enroll with access to specific, clearly defined, and understandable occupations, which, upon successful completion, enables graduates to gain entry into the workforce based upon successful passage of a state administered licensing exam.

- Predominately women and minority student serving
- Managed growth with focus on meeting industry needs
- Majority of our institutions meet the classification as "small businesses"

## **What We Are Not:**

Private sector colleges and universities, offering a multitude of educational disciplines, using traditional and alternative educational modalities, which promote rapid growth and significantly expanded enrollment in relatively short periods of time.

- Not on-line focused
- Not rapid growth centric

## **I. Alternative Eligibility Criteria for Cosmetology Schools**

- **AACS urges the Office of Information and Regulatory Affairs (OIRA) to ensure that the Department of Education (Department) final regulations include an alternative eligibility requirement for programs which lead directly to licensure.**

**If a school can demonstrate a pass rate of a significant percentage of its students on state licensing examinations then a program should be considered as successfully preparing students for gainful employment in a recognized occupation.** Successful passage of the exam is clear evidence that the quality of training is sufficient to receive a license to practice and directly results in the opportunity to seek employment in a recognized occupation. Even if an individual has difficulty in securing employment at an existing business entity, they are legally able to become self employed either as an independent contractor or as owner of their own business.

## **II. Annual Loan Repayment Rates**

- **Program Eligibility**
  - **Very limited institutional exemptions from the annual loan repayment rates for institutions with a low number of borrowers in repayment.** The number of



institutions who fail the repayment rate thresholds based upon a small number of students in repayment is significant. **AACS requests that OIRA ensure that the Department's final regulations include eligibility exemptions for institutions with four year cohorts of 120 students or less – based on the past precedence of 30 borrowers in repayment under cohort default rates.**

- **AACS requests that OIRA ensure that the Department's final regulations establish a review and appeal process whereby institutions have the ability to analyze and verify the data used to determine the annual loan repayment rate.** As currently proposed, an institution would not have the ability to review the data used to generate the loan repayment rate, verify it against their own records and data contained on NSLDS, and report any inaccuracies or errors which could have a bearing on their future programmatic, or in some cases institutional eligibility.
- **AACS requests that OIRA ensure that the Department's final regulations provide institutions that have more than 50% of students educated in a single discipline/field of study do not lose eligibility based on Section 668.7 unless they fail to meet the required thresholds for 3 consecutive years.**
- **Deferments**
  - **AACS requests that OIRA ensure that the Department's final regulations exclude deferments due to medical, disability, etc. from the calculation in the same manner that in-school and military deferments are handled.**
- **Extended Phase In of Gainful Employment**
  - **AACS requests that OIRA ensure that the Department's final regulations are phased in after a three-year delay, as opposed to the current NPRM proposal for a one-year delay, to provide enough time for the colleges to adapt to the new regulatory requirements.** Without such a delay, the scope of the current loan repayment rate proposal includes some borrowers who will have already separated from the colleges on the date the regulations become effective. It is much more difficult for a college to influence repayment behavior of borrowers after they have already left the college.

Such a delay is not without precedent. For example, when Congress decided to switch from a 2-year cohort default rate to a 3-year cohort default rate as part of the Higher Education Opportunity Act of 2008, it delayed the effective date for sanctions until three years of official 3-year cohort default rates were available. Congress also delayed the switch to 3-year cohort default rates until FY2009 even though it could have started the switch in FY2007.

- **Loan Repayment Calculation**
  - **AACS requests that OIRA ensure that the Department's loan repayment rate calculation is based on comparisons of the sum of the principal balance and the accrued but unpaid interest on the loans as opposed to comparisons of just the principal balance.** This will help determine whether the borrower is paying down the

total loan balance. This change addresses only the persistence of interest problem, when it is due to uncapitalized accrued but unpaid interest and when it is due to the midyear capitalization of interest.

### III. Debt-to-Income

- **AACS seeks OIRA assurances that the Department's student debt-to-income ratio be revised to provide institutions with two alternate methods of establishing income based upon the higher of:**
  - **Bureau of Labor Statistics mean annual wage; or**
  - **Median actual earnings of student completers based upon Federal agency aggregated data.**

AACS has been able to determine that even with variances for the approximately 50% of cosmetology graduates who are owners and independent contractors, that BLS data based upon mean annual wage is a close approximation to the individual wage data we collected.

Using the mean annual wage more accurately reflects a completer's earnings capability beyond entry level wages which is clearly warranted in a field like cosmetology where some time to develop clientele is a crucial component of earnings potential. BLS data, even though understated as it is in the cosmetology sector, at least provides schools with a finite number to use in its business model and management strategies to achieve a specified benchmark, whereas actual earnings are not available until they are applied as a metric leading to irreversible sanctions. Furthermore, BLS data is specifically based on employment in a recognized occupation related to the training received. It also projects income on an annualized basis, which helps to mitigate the fact that many of our graduates are single parents or parents with school age children who can only work part time for substantial periods after graduation.

In the event a school does not meet the debt to income ratio as described above using BLS data; the option of **median** actual earnings would be available. However, just as the Department has repeatedly emphasized since the first mention of debt to income that they chose to use the median debt level rather than the average in order to eliminate the inordinate influence of the extremes at each end of the scale, so should the median earnings be used rather than the average. There will always be some number of unemployed completers, for any variety of reasons, who will report zero earnings. For each completer with zero earnings, a school would have to yield an equal number who earn double the typical wage just to compensate for the impact of averaging. Taking the median wage for a list of completers will minimize the impact of extremes at either end of the list and yield a more typical income level. Since the actual earnings of individuals may or may not have any relationship to the training received at an institution, the use of the median is more likely to capture the typical earnings in a recognized occupation. This

is based on the assumption that most of the completers of a program will be working in a field related to the program in which they received training.

Based on the different scenarios either captured or not considered by each of these metrics independently, and since the attempt to measure a valid correlation between either one with quality of education or gainful employment is substantially less than an absolute science, it is imperative that schools be afforded the option of the two pronged approach as suggested.

- **AACS requests that OIRA ensure that the Department's final regulations include a separate, initial assessment for institutions based solely on whether or not the institution meets the debt-to-income ratio.**

**AACS believes our institutions, with some modification, are capable of, and willing to, comply with the student debt-to-income ratio.** However, as clearly shown by the Department's own data, and independent analysis by AACS of the models and spreadsheets used to derive the annual loan repayment rates, AACS does not see how close to half, and possibly more than half, of our institutions, many of whom are single program institutions, will be able to comply with the repayment metric as currently prescribed.

- **AACS requests that OIRA ensure that the Department's final regulations combine the 3YP and P3YP periods providing all institutions with the opportunity to use six years worth of employment data under the student debt-to-income ratio, if evaluating the median actual earnings.**

In order to simplify the assessment of eligibility and reduce some of the administrative burden on institutions, AACS requests that the Department eliminate the separate 3YP and P3YP approach in support of a single threshold based upon six years worth of income data.

Making this change will alleviate several concerns AACS has with other portions of the proposed regulations and will provide the Department with a more accurate indication of a graduate's earning potential and their ability to repay.

**This change is of considerable importance to our sector given the time needed for graduates to build a clientele, advance within the workplace, and possibly advance into other areas of the cosmetology industry including manufacturing and merchandizing.**



*Advocacy: the voice of small business in government*

September 9, 2010

VIA ELECTRONIC SUBMISSION

Jessica Finkel  
U.S. Department of Education  
1990 K Street, NW, Room 8031  
Washington, DC 20006-8502

RE: The Office of Postsecondary Education's Notice of Proposed Rulemaking on "Program Integrity: Gainful Employment," Docket ID ED-2010-OPE-0012, 75 Fed. Reg. 43616 (July 26, 2010)

Dear Ms. Finkel:

The Office of Advocacy (Advocacy) of the U.S. Small Business Administration submits these comments to the Department of Education's Office of Postsecondary Education regarding its Notice of Proposed Rulemaking (NPRM), which would establish measures for determining whether certain postsecondary educational programs lead to "gainful employment" in recognized occupations, and the conditions under which these educational programs remain eligible for the student financial assistance programs authorized under title IV of the Higher Education Act of 1965, as amended (HEA).

Advocacy recognizes the importance of the dual goals of protecting students from extreme debt and protecting taxpayers from the negative consequences of default.<sup>1</sup> However, Advocacy is concerned about the economic impact this proposal may have on small institutions as the agency pursues its goals. Advocacy has been contacted by small institutions and their representatives who have expressed concerns regarding this proposal.<sup>2</sup> Advocacy urges the agency to take these concerns into consideration as it proceeds.

**The Office of Advocacy**

The Office of Advocacy, created in 1976, monitors and reports on agency compliance with the Regulatory Flexibility Act of 1980 (RFA), as amended by the Small

<sup>1</sup> 75 Fed. Reg. 43616 (July 26, 2010).

<sup>2</sup> The Office of Advocacy was contacted by representatives from the Career Colleges Association, the American Association of Cosmetology Schools, the HEAL (Higher Education Allied Health Leaders) Coalition and others regarding the impact of this proposal on their small institutions members.



Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).<sup>3</sup> Because it is an independent office within the SBA, the views expressed by Advocacy do not necessarily reflect the views of the SBA or the Administration.

The RFA requires federal agencies to determine a rule's economic impact on small entities and consider significant regulatory alternatives that achieve the agency's objectives while minimizing the impact on small entities. The RFA's definition of small entity includes small businesses, which includes small for-profit schools (defined by SBA as those with annual revenues less than \$7,000,000),<sup>4</sup> and small organizations, defined as "any not-for-profit enterprise which is independently owned and operated and not dominant in its field," including private not-for-profit institutions.

In addition, under Executive Order 13272 agencies are required to give every appropriate consideration to comments provided by Advocacy.<sup>5</sup> The agency must include, in any explanation or discussion accompanying the final rule's publication in the Federal Register, the agency's response to Advocacy's written comments on the proposed rule, unless the agency certifies that the public interest is not served by doing so.

### **Small Entity Concerns with the NPRM**

Advocacy commends the Department of Education for including an initial regulatory flexibility analysis (IRFA)<sup>6</sup> in this proposal, as well as making available to the public much of the information that provided the basis for that analysis. After reviewing the IRFA and discussing the proposal with small institutions, Advocacy would like to relay the following small business concerns with the NPRM, as well as provide a number of proposed alternatives for the agency's consideration. As the agency has

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<sup>3</sup> Pub. L. No. 96-354, 94 Stat. 1164 (1980), (codified as amended at 5 U.S.C. §§ 601-612).

<sup>4</sup> The U.S. Small Business Administration has established numerical definitions, or "size standards," for all for-profit industries. Size standards represent the largest size that a business (including its subsidiaries and affiliates) may be to remain classified as a small business concern. For-profit schools are considered "small businesses" if the institution's annual revenue is less than \$7,000,000. For more information, please see <http://www.sba.gov/contractingopportunities/officials/size/index.html>.

<sup>5</sup> E.O. 13272, at § 2(c).

<sup>6</sup> Under section 603(b) of the Regulatory Flexibility Act, an IRFA must describe the impact of the proposed rule on small entities and contain the following information: 1) a description of the reasons why the action by the agency is being considered, 2) a succinct statement of the objectives of, and legal basis for, the proposed rule, 3) a description- and, where feasible, an estimate of the number- of small entities to which the proposed rule will apply, 4) a description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirements and the types of professional skills necessary for preparation of the report or record, and 5) an identification, to the extent practicable, of all relevant federal rules that may duplicate, overlap, or conflict with the proposed rule. Section 603(c) requires an agency to include a description of any significant alternatives to the proposed rule that minimize significant economic impacts on small entities while accomplishing the agency's objectives. For more information, please see the Office of Advocacy's "A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act," at <http://www.sba.gov/advo/laws/rfaguide.pdf>.



acknowledged, some of the analysis of this rule's impact on small entities is uncertain.<sup>7</sup> In light of this fact, Advocacy urges the agency to consider the following:

1. Small entities are concerned that the agency's economic analysis did not adequately capture the potential impact on small institutions

The agency has noted that many of the programs subject to the regulation are offered by institutions that would qualify as small entities<sup>8</sup> (as noted above these small institutions include for profit schools with annual revenue under \$7,000,000 and other occupationally-specific training at other institutions). However, Advocacy is concerned that the IRFA failed to fully address the disproportionate impact on this sector.

In part, Advocacy is concerned that the agency was unable to produce more program-specific data with regard to small institutions. Advocacy is concerned that many small institutions who only offer a few programs would be much more vulnerable to the proposed changes. Small entities may not have the resources that would allow them to recoup losses in one ineligible program by focusing on gaining revenue in another.

For example, Advocacy has learned that according to the American Association of Cosmetology Schools, the average number of programs offered by their members is believed to be 1.5. While the agency acknowledges that a "significant component" of cosmetology programs have only one program, these institutions, most of which are small institutions, were excluded from the analysis.<sup>9</sup> Advocacy urges the agency to further assess the impact on small entities, and provide more program-specific information.

2. Small entities are concerned about the proposed metrics used to define "gainful employment"

Small entities have expressed concerns regarding the agency's decision to use set limits as the primary tool to determine whether an agency is preparing its students for gainful employment as well as the complexity of these metrics. Small entities are also concerned about whether the proposed metrics alone provide an accurate measure of gainful employment. Advocacy urges the agency to consider the following small entity concerns regarding the proposed metrics and work with the industry as this rule proceeds to ensure that any limits included are appropriate. Advocacy has also noted additional

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<sup>7</sup> For example, the agency did not offer a count of the number of programs offered by institutions, but rather provided a rough estimate, and requested comments on the accuracy of that information. This is important because the proposed regulations determine eligibility for each individual program, not institutions as a whole. An institution may have programs that remain eligible and some that become ineligible after implementation. 75 Fed. Reg. 43696.

<sup>8</sup> *Id.*

<sup>9</sup> 75 Fed. Reg. 43668-43669. The agency utilized information from the Missouri Department of Higher Education as the basis for analysis for this rule's regulatory impact analysis. However, as the agency notes, there were some limits due to lack of data availability, including the exclusion of cosmetology schools in the analysis.

considerations that may be used by the agency to determine if an institution is preparing its students for gainful employment.

The agency has proposed the utilization of limits related to repayment rates and debt to income ratios to determine whether an institution is preparing its students for gainful employment. With regard to the repayment rate, small entities have expressed concern about the lack of flexibility and confusion that may stem from these proposed limits, since some repayment options available to students will not be acceptable for the purposes of passing the repayment test proposed in this rule. For example, students electing to defer or forbear their loans are not considered to be in repayment for purposes of this rule. In addition, the repayment rate is based upon a 10-year repayment plan, when students may have the option to elect an extended repayment plan.

Small entities have also expressed concern regarding the debt to income ratio, specifically the use of an average to determine the income for an institution in the calculation of the ratio.<sup>10</sup> This ratio could fluctuate greatly year to year with the impact of just a few students. Small entities have specifically noted concerns regarding programs with fewer students, noting that limited enrollment may make them particularly vulnerable to changes in the ratio, and will make it particularly difficult for those institutions to assess future compliance. Small entities have also requested additional information regarding the impact on programs when debt to income information is not available.

While a number of small entities have expressed concerns about the use of a strict test with additional stipulations as well as the complexity of the test, small entities have also suggested that these set limits should not serve as the principal indicator of an institution's success in preparing a student for gainful employment. While the metrics used may be a useful indicator of an institution's success, small entities argue that these metrics should not be the sole consideration when deciding whether an institution prepares its students for gainful employment.

Small institutions have noted the following factors that could be used to determine whether an institution is fulfilling its requirement of preparing students for gainful employment. The agency has addressed a couple of these recommendations briefly, but Advocacy requests that the agency provide a more thorough analysis of the feasibility of these options.

- a. Certification/Licensure: Many small institution graduates are already subject to state and/or professional licensure and certification. Small entities have suggested that Education consider including an institution's licensure/certification rate as an alternative method for determining whether a program is meeting the gainful employment requirement. Small entities argue that there is a direct link between their program's

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<sup>10</sup> The debt levels for the debt to income ratio are calculated using the median of the students' statistics, while the income levels are calculated using the average. "Frequently Asked Questions: Program Integrity: Gainful Employment Notice of Proposed Rulemaking," available at: <http://www2.ed.gov/policy/highered/peg/hearulemaking/2009/ge-faq.pdf>.

ability to adequately prepare students for gainful employment and the student's ability to pass the exams necessary to gain a license or certificate in a particular area.

- b. **Employer Verifications:** In addition, small entities have suggested utilizing employer verifications to a larger extent as a tool to determine whether an institution is preparing its students for gainful employment. This involves obtaining assessments from local employers regarding their analysis of the program's curriculum and student assessments. Small entities argue that these verifications offer strong support of the marketability of a student's skills, which promotes additional gainful employment opportunities.
- c. **Disclosures:** Small entities are supportive of providing students with the information necessary to make an informed decision regarding their future studies. Ensuring that institutions disclose the appropriate information regarding financial aid and potential job prospects is central to the pursuit of the agency's goal of protecting students from unmanageable debt.

3. If the rule is implemented as proposed, small entities are concerned about their ability to assess their compliance and identify methods to remedy

Small institutions have expressed concern that even if they are inclined to proactively address possible issues with compliance, that they will be unable to access the information needed to fully assess whether they will pass the repayment and debt/income tests. The agency states that since the regulations will not go into effect until July 1, 2012, this will provide institutions with an opportunity to assess their programs and "take steps to mitigate the number of programs negatively affected."<sup>11</sup> However, Advocacy notes that with few resources and limited access to some of the financial information required to fully assess the implications of this rule, it may be very difficult for many small institutions to adequately assess and prepare for this rule's implementation by July 1, 2012. Small institutions request additional information from the agency on steps they can take to access this information and determine their projected compliance with the rule.

**Additional Alternatives to Reduce the Potential Impact on Small Entities**

Section 603(c) of the RFA<sup>12</sup> requires agency's to include in their IRFA a description of any significant alternatives to the proposed rule that minimize significant economic impacts on small entities while accomplishing the agency's objectives. While the agency did note a few alternatives in the IRFA analysis, Advocacy recommends that the agency thoroughly consider the additional alternatives below.

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<sup>11</sup> 75 Fed. Reg. 43660.

<sup>12</sup> 5 U.S.C. § 603(c).

## 1. Small Institution Exemption:

Much of the impetus for the rule springs from the negative admissions practices and other faults by some for-profit schools. As the Secretary has noted, many of the problems discussed recently regarding the for-profit industry “afflict only a small minority of vocational and career programs.”<sup>13</sup> The discussion has focused primarily on the for-profit institutions with the largest amount of revenue, while smaller schools have not been identified as a large part of the problem. While these issues regarding fraudulent practices and failing programs certainly need to be addressed to ensure that students and taxpayers alike are protected, Advocacy urges the agency to consider the numerous small institutions in this sector that will be significantly impacted by this proposal.

The Secretary has stated that the Department of Education “will take all measures necessary to ensure that a new rule does not have significant negative unintended consequences.”<sup>14</sup> However, many in the small institution community are very concerned that this rule will in fact have significant unintended consequences on their sector. In order to avoid these significant unintended consequences, Advocacy recommends that the agency consider exempting small institutions from the requirements of this rule. As described above, small entities fear that the impact of this proposal could be much greater on them versus their larger institution counterparts. Advocacy urges the agency to consider this impact and ensure that this important sector is not unintentionally burdened.

## 2. Additional Compliance Time:

While Advocacy urges the agency to consider exempting these smaller institutions from the rule requirements, as an alternative, Advocacy recommends that the agency consider providing the smaller institutions with additional time in order to comply with the rule’s requirements. As stated above, small institutions have expressed concern over the complexity of the rule’s metrics, over the lack of information available to allow entities to assess their own compliance, as well as their ability to effectuate changes in their school’s compliance. Small institutions may not have the resources immediately available to devote staff time to quickly deciphering their compliance with the rule and creating strategic plans to become compliant.

Advocacy urges the agency to consider extending the compliance time for small entities and, as recommended above, provide them with additional guidance on ways to access available information, determine compliance, and mitigate the number of programs that would be negatively impacted.

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<sup>13</sup> “Debate: We Only Want to Make Sure Schools Deliver Results,” *AOL News Op-Ed*, April 21, 2010, available at <http://www.ed.gov/blog/2010/04/aol-news-op-ed-debate-we-only-want-to-make-sure-schools-deliver-results/>.

<sup>14</sup> *Id.*



**Conclusion**

As the Secretary has stated, there is an important role for the for-profit schools to play in training our workforce and preparing our students to be globally competitive. Many of these proprietary schools and other institutions offering certificate-granting programs provide the flexibility that many nontraditional students require in order to reach their educational goals. Small institutions in particular can tailor their services to respond to an employers' demands in their community and offer flexibility.

However, as noted earlier, many of these smaller institutions remain more vulnerable to the impacts of this proposal than some of the larger institutions. Advocacy urges the agency to thoroughly assess the impact this proposal will have on many small institutions as it works toward its important goals of protecting students from unmanageable debt and protecting the taxpayers' investment.

The Office of Advocacy appreciates the opportunity to comment on this rulemaking and welcomes the opportunity to assist the agency in the future as it considers the impact of this proposal. Should you have any questions or require additional information, please contact me or Kate Reichert of my staff at (202) 205-6972.

Sincerely,

/s/

Winslow Sargeant, Ph.D.  
Chief Counsel for Advocacy

/s/

Kate Reichert  
Assistant Chief Counsel

cc: The Honorable Cass R. Sunstein, Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget



August 13, 2010

Mr. Charles A Maresca  
Director, Interagency Affairs - Office of Advocacy  
U.S. Small Business Administration  
409 Third Street, SW  
Suite 7800  
Washington, DC, 20416

Dear Mr. Maresca:

On behalf of the America Association of Cosmetology Schools (AACCS), I would like to once again thank you and your colleagues for taking the opportunity to meet with representatives from our association and the Career College Association.

As we discussed on July 29, 2010, both associations are very concerned with the potentially devastating impact of proposed regulations introduced by the U.S. Department of Education and their anticipated impact on proprietary institutions of higher education who meet the Small Business Administration's "small business" definition.

During our meeting you made it very clear that one of the many responsibilities of the Office of Advocacy, and the Interagency Affairs Division was to determine when regulations proposed by other agencies could potentially have an adverse impact on small businesses. And, if based upon data and information provided to your department it appeared there was significant evidence to suggest that small businesses could be harmed, the SBA could take steps to provide the alternate agency with recommendations which would seek to mitigate or eliminate the negative consequences of such proposals.

AACCS believes ardently that the U.S. Department of Education's June 18, 2010 and July 26, 2010 Notices of Proposed Rulemaking (NPRM) seeking to define "gainful employment in a recognized occupation" exemplify regulations worthy of your department's review and submission of a response requesting modifications that will protect and preserve the future of the over ninety percent (90%) of AACCS' membership who are small businesses.

AACCS believes there is significant, and mounting, evidence to suggest that the promulgation of these regulations contained in the NPRMs in their current form will force over half of the cosmetology institutions in the country to either close or severely restrict their future growth.

Without intervention from the SBA, it is likely that we will see a significant reduction in the number of cosmetology institutions needed to meet the growing employment demand for cosmetologist and related industry professionals, resulting in:

- a significant reduction in the number of highly-skilled applicants to meet the Bureau of Labor Statistics' *Fastest Growing* and *Most in Demand* occupational listings between 2008-2018 - which include Hairdressers, Hairstylists, Cosmetologists, Skin Care Specialist, Manicurist and Pedicurists, and Massage Therapists;

- a significant reduction in highly-skilled employees to meet the workforce demands of the \$8 billion a year cosmetology industry; and
- an inability, or at the very least diminished ability, to attain the Obama Administration's 2020 goal of adding between 5-8 million new postsecondary credentialed individuals to the workforce and once again leading the world in postsecondary educational attainment.

In order to better understand the implication of the proposed regulations, AACCS recently commissioned Dr. Clive R. Belfield – noted economist and education cost-benefit analyst – to conduct a Regulatory Impact Assessment (RIA) of the Department of Education's proposal to identify its main economic consequences and its potential impact specifically on cosmetology institutions of higher education.

Included in the report are a number of issues which AACCS hopes provide both data and analysis that will be of interest to the SBA. The report includes:

- Assessment of the broad rationale for the regulation and consideration of some important issues in creating policy based upon that rationale and a human capital model;
- a summary of the findings based upon the RIA, with some preliminary comments about how the findings can be applied to the cosmetology sector;
- a summary of the specific characteristics of the cosmetology sector that may be relevant in calculating the impact on the sector; and
- a review of the compliance costs included in the RIA.

Based upon Dr. Belfield's analysis, his findings highlight the paradigm shift of the proposed regulation; the general impact of this far-reaching proposal on students, institutions, their programs, and sectors of the higher education community; key factors that may make the burden on cosmetology students and schools particularly strong and uncertain; and a host of other concerns and unanswered questions based upon the Department's proposal. Most notably, Dr. Belfield states:

### **Paradigm Shift**

"Eligibility for student financial assistance has not merely been clarified; it has been substantially re-defined and made more exacting...The proposed definition instead establishes a threshold rate of return for each college's graduates; if that threshold return is not met, the college would face either restricted eligibility for funding or be ineligible for funding."

### **General Impact**

"The RIA includes predictions of the proposed regulations on students, programs, institutions, and sectors. The RIA also models the effects on small business entities. Strictly, the debt-to-income and repayment rate thresholds are to be applied at the program level; the effects on students, institutions, sectors, and small businesses are therefore a function of how many of the programs are ineligible.

At this stage, it is not possible to obtain a clear picture of the consequences of the RIA for cosmetology programs. This is because the RIA generates many different, averaged estimates



and because it is not fully transparent. As well, for reasons (contained in the next section) below, there are potentially many ways in which cosmetology schools differ from the average.

In summary, the consequences for the cosmetology sector may be significant. However, the existing RIA is inadequate for accurately predicting the impact of the regulations on the cosmetology sector. Conservatively, the effect may be 8% of lost enrollment, at the upper end, the effect may be perhaps 33%.”

### **Cosmetology School Impact**

“As best we can infer from the RIA, the impact of the proposed regulation will be significant. Moreover, there are several factors that may make the burden on cosmetology students particularly strong and uncertain. These factors relate to: the characteristics of cosmetology students; the market structure, i.e. the characteristics of cosmetology schools; and the labor opportunities for cosmetology graduates. At this stage, it is not possible to model or accurately predict the consequences of the regulation on the cosmetology sector, it is only possible to draw attention to these factors.”

#### Student Characteristics

“Cosmetology students are disproportionately female. Female students experience very different income paths relative to males. Although females typically reap higher net returns from college, their absolute salaries are lower and this will affect the debt-income ratios.”

#### Market Structure

“Cosmetology schools are relatively small institutions, demarcated by states. How cosmetology schools respond to the regulation may depend on the licensing requirements and these vary by state.

Cosmetology schools are more likely to offer only one program (CIP code). As the RIA shows, single-CIP colleges may be particularly sensitive to the proposed regulation because their students cannot switch programs and because their revenues are concentrated in one area.”

#### Labor Market

“The labor market and wage bargain for cosmetology graduates are somewhat different from the norm. A fundamental aspect of the labor market is licensing: all states require barbers, cosmetologists, and personal appearance workers to be licensed. Licensing requires graduation from a state-licensed college and that the student passes the state licensing exam. Importantly, these licensing procedures vary from state to state, with only limited reciprocity across states. It is therefore likely that the proposed regulations will have a differential impact across states, at least in the short term until wages adjust (or licensing requirements are altered).

The wage bargain in cosmetology occupations is atypical. This is primarily because of the very high proportion of graduates who are self-employed: the percentage for the cosmetology sector is 44%, as compared to 8% for the U.S. labor market as a whole (BLS 2010). There are several important differences for cosmetology graduates who are self-employed:

- Many self-employed workers own their enterprise. Thus, they will be getting a return on capital as well as a return on labor. Self-employed persons may opt for remuneration in the form of benefits or asset accumulation by building their own business.
- Self-employed persons are often willing to take lower pay in return for autonomy. Thus, they may be more willing to have a higher debt-to-income ratio.
- The spread of wages is different for the self-employed: there are a disproportionate number of high-earners. Using the median earnings may therefore fail to reflect this upside of the occupation. Median earnings are much lower than the mean for self-employed workers than for salaried employees. Choosing the median earnings as a threshold therefore favors salaried work over self-employment.
- Self-employment opportunities also serve as an 'insurance' against unemployment. A barber who loses his job at a salon, for example, may set up independently; an auto-worker has no equivalent option. This insurance may be valuable over the lifetime."

### **Additional Key Concerns & Questions**

*"It is critical that the earnings data used are valid for this purpose.* Clearly, the threshold for eligibility will depend on the income data. These income data will be taken from the Master Earning File (MEF) of the Social Security Administration, derived from W-2s and Form 1040s. These income data may be valid for the purpose at hand, although there are several questions.

- The MEF is not released, even on restricted access terms. Independent economists cannot therefore interpret them (and colleges cannot derive earnings figures for their particular programs).
- The MEF are currently used to determine eligibility for social security benefits; the dataset may not be structured to yield income data suitable for calculating the returns to college.
- One concern is consistency in earnings estimates over time. If the MEF changes to better suit its primary purpose, this may yield different income results for the purposes of determining eligibility. More generally, the U.S. labor market is characterized by high income mobility and high income variability, particularly for young workers. There is a potential that the earnings estimates will fluctuate significantly each year.
- Also, W-2s do not include deferred-compensation contributions, which may be important for persons who own a business. It is not clear how any capital invested in a business will be counted.
- Finally, there are also potential issues related to: how person with no tax returns will be included in the calculation of earnings; specifically which declared income (e.g. AGI or net taxable) will be used; how joint versus single claimants will be processed; and how the earnings data will be adjusted for local labor market conditions and local prices."

Given the results of the analysis conducted by Dr. Belfield, and the concerns raised by our membership, AACCS believes that the Department of Education should be asked to withdraw these regulations from consideration until such time as a more thorough review and evaluation of their impact on all institutions of higher education, and particularly those which are classified as small businesses can be evaluated.

We look forward to continued dialogue with your office.

Christine Gordon  
Co-Chair Government Relations  
American Association of Cosmetology Schools

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CC:

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Brian Moran, Executive Vice President for Government Relations, Career College Association  
Katherine Brodic, Career College Association





# *P&G salon professional*

February 18, 2011

The Honorable Arne Duncan  
Secretary  
U.S. Department of Education  
400 Maryland Avenue, SE  
Washington, DC 20202

Dear Secretary Duncan:

As the Department of Education moves to finalize its proposed regulations on gainful employment, Procter & Gamble wishes to express its concern about the impact this regulatory change could have on schools of cosmetology, the millions of consumers who rely upon graduates of these institutions to look and feel their best, and the thousands of large and small businesses that currently serve as suppliers and vendors for the schools and salon professionals.

Procter & Gamble is one of the largest suppliers of professional hair care and hair colorant products to cosmetology schools and salons in the United States. Our professional hair care business is highly dependent upon the hair professionals that select and recommend our products to their salon customers. Procter & Gamble also frequently hires trained graduates from schools of cosmetology due to their specific technical education and the credentials awarded to graduates of these institutions.

Hair care and cosmetology services are growing fields, and demand is expected to grow an estimated 20 percent by 2018. According to the American Association of Cosmetology Schools, the Department of Education proposed gainful employment definition and requirements would have serious implications for schools by potentially reducing financial aid availability for as many as 60 percent of schools. This reduction will dramatically impact access for salon customers as well as financially impede suppliers such as Procter & Gamble who serve the schools and salon professionals.

Procter & Gamble encourages the Department to take into account the full ramifications of any proposed change in the gainful employment definition and requirements as they pertain to cosmetology schools. We further support the recommendations of the American Association of Cosmetology School regarding the proposed changes.

Thank you for your consideration.

Sincerely,



Reuben A. Carranza

P&G Beauty, salon Professional/6109 DeSoto Avenue/Woodland Hills, CA 91367



**Eligibility for Student Financial Assistance Programs  
under Title IV of the Higher Education Act of 1965**

**Review for the American Association of Cosmetology Schools**

**CONFIDENTIAL  
NOT FOR RELEASE OR DISSEMINATION**

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August 20 2010

## 1. Summary of the Proposed Regulation

The U.S. Department of Education proposes to re-define the “gainful employment in a recognized occupation” provision for determining eligibility for student financial assistance programs authorized under title IV of the Higher Education Act of 1965 (HEA). This proposed regulation has been subject to a Regulatory Impact Assessment (RIA) to identify its main economic consequences.

Gainful employment will be defined in terms of student debt–income ratios and repayment rates. Threshold values will be used to determine if any given program (not college or student) is eligible for funding. Programs are defined in terms of CIP code and terminal qualification.

For repayment rates:

- Programs would qualify for title IV HEA funds if students repay their federal loans at a rate of  $\geq 45\%$  (total amount of loans divided by the original outstanding balance in the prior four fiscal years).
- Programs may be ineligible for title IV HEA funds if students repay their federal loans at a rate of  $\leq 35\%$  (total amount of loans divided by the original outstanding balance in the prior four fiscal years).

For debt-income ratios:

- Programs would qualify for title IV HEA funds if the completers have annual debt service payments of either  $\leq 8\%$  of average annual earnings or  $\leq 20\%$  of discretionary income.
- Programs may be ineligible for title IV HEA funds if the completers have annual debt service payments of either  $> 12\%$  of average annual earnings or  $> 30\%$  of discretionary income.

Incomes are measured as the “most current income available” of students who either: (a) completed the program in the most recent three years; or (b) completed the program four, five and six years prior to the most recent year.

This report serves several purposes:

- It addresses the broad rationale for the regulation and considers some important issues in creating policy based on that rationale (Section 2).
- It briefly summarizes the findings from the RIA, with some preliminary comments about how the findings can be applied to the cosmetology sector (Section 3).
- It summarizes the specific characteristics of the cosmetology sector that may be relevant in calculating the impact on the sector (Section 4).
- It briefly reviews the compliance costs included in the RIA (Section 5).

In the final Section of the Report we outline possible areas for further investigation.

## 2. The Rationale for the Regulation: Education as an Investment

Eligibility for student financial assistance has not merely been clarified; it has been substantially re-defined and made more exacting. Presently, 'gainful employment' refers - in general terms - to one of the benefits of college, i.e. the additional income associated with going to college. The proposed definition instead establishes a threshold rate of return for each college's graduates; if that threshold return is not met, the college would face either restricted eligibility for funding or be ineligible for funding.

This more stringent definition is based on the human capital model, in which education is an investment with initial costs (tuition and foregone earnings) that must be weighed against any monetary benefits that arise from being more educated. This long-standing model is widely accepted by economists as the appropriate way to evaluate educational investments.<sup>1</sup> However, it is not straightforward to fully measure the costs and benefits of education: and it is not a simple matter to decide when the costs exceed the benefits. The proposed thresholds are based on a review by Baum and Schwartz (2006) and an appeal to the notion of an 'industry standard'. But these thresholds should not be interpreted as exact: they are benchmarks, rather than rules.<sup>2</sup>

***It is essential that all costs and benefits of education are considered.*** The new definition may not correctly capture the returns to college. On the costs side, the proposed thresholds do not incorporate the fact that public colleges receive substantial subsidies from other sources, as well as differential tax treatment. These institutions can therefore charge lower fees and so enroll students who subsequently have lower debt rates. On the benefits side, there are many social benefits from education. There is a wealth of social science evidence showing that the benefits of college are not restricted to earnings advantages. These other benefits include improved health, well-being, as well as lower reliance on government supports such as food stamps and welfare.<sup>3</sup> Indeed, the earnings advantages may only reflect half of the benefit of going to college; the other half is not expressed directly in money terms, but is nonetheless valuable to the individual student and society.<sup>4</sup>

***The rate of return must be properly calculated.*** Formally, the benefits of college are the net gains beyond what the individual would have obtained absent the qualifications. It is the difference in earnings that is key, not the level of earnings. Individuals might therefore be willing to accept a lower wage after graduation because they perceive that their alternative wage would have been even lower. As well, the returns to education are long-lived: it is important that the returns are calculated over the lifetime and not over the short run.

***It is critical that the earnings data used are valid for this purpose.*** Clearly, the threshold for eligibility will depend on the income data. These income data will be taken from the Master Earnings File (MEF) of the Social Security Administration, derived from W-2s and Form 1040s.<sup>5</sup> These income data may be valid for the purpose at hand, although there are several questions.

- The MEF is not released, even on restricted access terms. Independent economists cannot therefore interpret them (and colleges cannot derive earnings figures for their particular programs).
- The MEF are currently used to determine eligibility for social security benefits; the dataset may not be structured to yield income data suitable for calculating the returns to college.
- One concern is consistency in earnings estimates over time. If the MEF changes to better suit its primary purpose, this may yield different income results for the purposes of determining eligibility. More generally, the U.S. labor market is characterized by high income mobility and high income variability, particularly for young workers.<sup>6</sup> There is a potential that the earnings estimates will fluctuate significantly each year.
- Also, the W-2s do not include deferred-compensation contributions, which may be important for persons who own a business. It is not clear how any capital invested in a business will be counted.
- Finally, there are also potential issues related to: how persons with no tax returns will be included in the calculations of earnings; specifically which declared income (e.g. AGI or net taxable) will be used; how joint versus single claimants will be processed; and how the earnings data will be adjusted for local labor market conditions and local prices.

***Predicting future educational demand is a very imprecise science.*** Unequivocally, persons with postsecondary education earn substantially more than persons with just a high school diploma.<sup>7</sup> This was certainly the case over the last decade. Yet predictions from the Bureau of Labor Statistics over the period 1998-2008 were that only 38 million workers really needed postsecondary education; the actual number who possessed such credentials was 61 million.<sup>8</sup> In the case of cosmetology, the General Accounting Office (GAO) identified the sector as one of the most over-supplied in 1997.<sup>9</sup> This contrasts with Bureau of Labor Statistics projections for the decade 2008-2018 that “employment [in cosmetology-related occupations] is expected to grow much faster than the average for all occupations”, at a rate of 20% over the next decade (or 0.16 million additional employment).<sup>10</sup> At the local labor market level, occupational demand predictions may be even more imprecise.

***The model presumes students decide on the investment based on college offerings and tuitions.*** To hold colleges accountable, it is necessary that colleges – and specifically the quality/cost of their programs – are responsible for student outcomes. Student characteristics such as ability, aptitude, and interests are not easily measurable by the colleges, yet these may significantly affect their likelihood of successfully pursuing a career in cosmetology occupations. In a recent analysis by Guryan and Thompson (2010), they estimate that “at least half of the default rates between for-profit and not-for-profit schools is because they serve different types of students”.<sup>11</sup> The proposed debt indicators do not control for student characteristics and as such may favor students who have family assets to support them during the college years. This raises the possibility of a disproportionate impact of the proposed regulation on low-income students.

More generally, there is a contractual issue. Colleges cannot force students to choose particular careers or occupations: they can only provide them with the requisite training during



enrollment. Thus, colleges cannot guarantee that their students will seek high-earning occupations. This issue is especially fraught for transfer students; it is not clear which college will be held accountable for these students' subsequent earnings. Similarly, it is not clear which loans will be used if a student undertakes multiple programs or advanced training within the same institution.

In summary, it is critical that the new definition correctly and fully captures all of the benefits of college. If it does not, the definition may understate the true return to college. As a result, some students may be denied access to college even though they are likely to gain a positive net return.<sup>12</sup>

### **3. General Impacts of the Proposed Regulation**

The RIA includes predictions of the proposed regulation on students, programs, institutions, and sectors. The RIA also models the effects on small business entities. Strictly, the debt-to-income and repayment rate thresholds are to be applied at the program level; the effects on students, institutions, sectors, and small businesses are therefore a function of how many of their programs are ineligible.

At this stage, it is not possible to obtain a clear picture of the consequences of the RIA for cosmetology programs. This is because the RIA generates many different, averaged estimates and because it is not fully transparent. As well, for reasons given in Section 4 below, there are potentially many ways in which cosmetology schools differ from the average.

There are other methodological and data issues over the results of the RIA. As the regulation is introduced, there are several possible effects when programs become ineligible. Students will either: (1) leave the college system entirely; (2) switch to other programs within the same college; (3) switch to the same program at a different college; (4) switch to a different program at a different college; and (5), in some cases, finish out their course in the now-ineligible program.<sup>13</sup> In order to accurately predict the effects of the regulation it is necessary to have data on repayment rates by program and to then model the student movements (1)-(5) as programs become ineligible. Unfortunately, because of data limitations, the RIA's repayment rates are measured at the institution level not the program level; these rates are then combined with data on income-by-program from Missouri's Department of Higher Education. In itself, this raises an issue in that no intra-institutional variation in repayment can be modeled.

Equally importantly, there are two critical inadequacies in the data. One is that the Missouri data does not include data on cosmetology programs (or on the not-for-profit sector). Obviously, this is a major obstacle to obtaining accurate predictions from the model.<sup>14</sup> The second inadequacy is that there is no information on earnings for graduates 4-6 years out of the program; the model is therefore based only on programs using income data from graduates from the immediate years prior.

In light of these aspects of the RIA, we review the range of possible consequences and outline how cosmetology programs might be differentially affected.

Overall, the prediction is that 5% of programs will be ineligible as a result of the proposed regulation; an additional 7% of programs will have restricted eligibility (RIA, Table G-1). These figures equate to 8% of students who are in ineligible programs and another 8% who are in restricted programs (approximately 300,000 persons in each category). However, because the debt levels of proprietary schools are higher than average, the overall prediction is that between 10%-16% of proprietary colleges would be ineligible.

Looking by sector, which the RIA devotes the most focus on, the predicted effects are summarized in Table 1 below. Losses in terms of students and tuition revenues are calculated. These effects on the for-profit sector are substantial, with losses for both 2-year and less than 2-year colleges. However, the biggest effect is 'churning': students transferring to other programs or other colleges or both. These effects across the for-profit sector are summarized in Table 2. To better understand the effects of the regulation it is critical to accurately model this 'churning'. Given these multiple effects it is not possible to derive a simple impact of the regulation.

Table 1 (page 131) of the RIA reports on the effects for single-CIP code institutions. These effects are based only on the repayment rate threshold, with data from the National Student Loan Data System. They do not take into account institutions that meet the debt-to-income threshold and so may over-estimate the impact of the regulation. Critically, however, Table 1 shows 578 single-CIP code institutions in the cosmetology CIP (12.04), of which 186 or 32.2% fail to meet the repayment threshold. It is not known how many of these colleges would pass the debt-to-income threshold. Also, based on IPEDS data, there are approximately 1,600 institutions that offer programs in this CIP code (so 1,100 are not single-CIP colleges). The effect across all these cosmetology programs is therefore unknown. Nevertheless, cosmetology colleges represent approximately half of all colleges that are predicted to fail the repayment threshold. Assuming the average cosmetology college enrolls 60 students (IPEDS, 2008) and all 186 colleges are ultimately declared ineligible, a first-order approximation of lost revenue might be at least \$100 million. (This figure is the loss to the 186 ineligible colleges; it assumes no students are allowed to finish out their programs. It is not the net loss to the cosmetology sector because some students would respond by moving to other colleges.)

Finally, the RIA examines the effects per institution, but only for small businesses that are given restricted status for Title IV funds. Looking at the for-profit less than two-year colleges, each restricted college will lose 41-60 students and \$0.32-\$0.45 million in revenue. For the for-profit two-year colleges, 45-67 students and \$0.43-\$0.63 million in revenue will be lost per college. These are the estimates only for the restricted status colleges; colleges with ineligible programs will have lost considerably more students and revenues.

In summary, the consequences for the cosmetology sector may be significant. However, the existing RIA is inadequate for accurately predicting the impact of the regulation on the cosmetology sector. Conservatively, the effect may be 8% of lost enrollment; at the upper end, the effect may be perhaps 33%.

#### **4. Impact on Cosmetology Students and Schools**

As best we can infer from the RIA, the impact of the proposed regulation will be significant. Moreover, there are several factors that may make the burden on cosmetology students particularly strong or uncertain. These factors relate to: the characteristics of cosmetology students; the market structure, i.e. the characteristics of cosmetology schools; and the labor opportunities for cosmetology graduates. At this stage, it is not possible to model or accurately predict the consequences of the regulation on the cosmetology sector, it is only possible to draw attention to these factors.

##### **4.1 Characteristics of cosmetology students**

Cosmetology students are disproportionately female. Female students experience very different income paths relative to males. Although females typically reap higher net returns from college, their absolute salaries are lower and this will affect the debt-income ratios. Female students may also have family obligations that will affect their ability to follow a 'traditional' labor market pathway. Research literature also shows that female workers value flexibility.<sup>15</sup>

##### **4.2 The market structure**

Cosmetology schools are relatively small institutions, demarcated by states. How cosmetology schools respond to the regulation may depend on the licensing requirements and these vary by state. Another state variation is in the alternative providers of cosmetology programs, such as community colleges. The vocational offerings and provision in community colleges vary across states (e.g. Tennessee has independent vocational colleges).

Cosmetology schools are more likely to offer only one program (CIP code). As the RIA shows, single-CIP colleges may be particularly sensitive to the proposed regulation because their students cannot switch programs and because their revenues are concentrated in one area. There are other aspects too, such as: the rolling or continuous option to enroll in cosmetology programs; the durations of the programs; and the extent to which other providers can absorb demand from ineligible programs.

##### **4.3 The labor market for cosmetology graduates**

The labor market and wage bargain for cosmetology graduates are somewhat different from the norm. A fundamental aspect of the labor market is licensing: all states require barbers,

cosmetologists, and personal appearance workers to be licensed. Licensing requires graduation from a state-licensed college and that the student passes the state licensing exam. Importantly, these licensing procedures vary from state to state, with only limited reciprocity across states. It is therefore likely that the proposed regulation will have a differential impact across states, at least in the short term until wages adjust (or licensing requirements are altered).

The wage bargain in cosmetology occupations is atypical. This is primarily because of the very high proportion of graduates who are self-employed: the percentage for the cosmetology sector is 44%, as compared to 8% for the U.S. labor market as a whole (BLS, 2010).<sup>16</sup> There are several important differences for cosmetology graduates who are self-employed:

- Many self-employed workers own their enterprise. Thus, they will be getting a return on capital as well as a return on labor. Self-employed persons may opt for remuneration in the form of benefits or asset accumulation by building their own business.
- Self-employed persons are often willing to take lower pay in return for autonomy.<sup>17</sup> Thus, they may be more willing to have a higher debt-income ratio.
- The spread of wages is different for the self-employed: there are a disproportionate number of high-earners. Using the median earnings may therefore fail to reflect this upside of the occupation. Median earnings are much lower than the mean for self-employed workers than for salaried employees.<sup>18</sup> Choosing the median earnings as a threshold therefore favors salaried work over self-employment.
- Self-employment opportunities also serve as an 'insurance' against unemployment. A barber who loses his job at a salon, for example, may set up independently; an auto-worker has no equivalent option. This insurance may be valuable over the lifetime.

## **5. Burden of Compliance with the Proposed Regulation**

The RIA estimates an additional burden in reporting for colleges. This estimate includes six requirements specific to the regulation and two general requirements related to the provision of program information.

Across all postsecondary institutions the annual estimated burden is \$1.9 million for the specific requirements and \$2.2 million for the general requirements. These burdens are measured using an hourly wage of \$20.71.

In some cases, it appears that the paperwork burden may be underestimated. A full appraisal of the accuracy of the burden is not possible here, but there are some illustrations on a per-program or per-institution basis:<sup>19</sup>

- The 'student notification of potential financial burden' requirement is estimated to take between 0.2 and one hour.
- The 'new program research' requirement is estimated to take 8-13 hours.
- The 'employer affirmations for ineligible institutions' requirement is estimated to take 8-11 hours.

However, there are other areas where the paperwork burden may be more onerous. As noted in Section 2 above, the regulation essentially requires that the colleges provide sufficient information to ensure that – in conjunction with the Department of Education – a rate of return can be calculated for each program. Such a calculation requires the college to keep detailed records on all programs that each student participates in. To my knowledge, no institution has calculated this rate of return; one of the possible reasons is because the informational burden of doing so is high.

Other compliance costs might also be considered. These may include costs related to challenging the determination of eligibility. Because the earnings data are not made available, an institution that is denied eligibility will have to appeal to understand the result. The cost of the appeals process is not included. An additional potential cost is that of uncertainty, as colleges will not have a clear estimate of their eligibility status until after the program has been delivered and the students have graduated.

## **6. Further Analysis**

There are a number of issues related to this RIA that may be worth exploring. These issues are not independent but are somewhat linked. So any further exploration might cover all of them, but just with an emphasis on one issue. Also, in themselves, these explorations may help the sector understand future developments when the regulation is implemented.

The most obvious is that the RIA does not appear to have used data for any of the cosmetology programs. This is of particular concern given that there are good reasons (see Section 4 above), as well as some predictions in the RIA, that the cosmetology sector will be significantly affected. The sector's student characteristics, market structure, and regional variation are not accounted for in the regulations. It may be worth generating a model from the RIA that directly examines the consequences for the sector, expanding on Sections 3 and 4 above.

The regulation presumes that there is a 'market failure': because of weak regulations, poor information, and anti-competitive practices by colleges, students are enrolling in and over-paying for college credentials. However, there are two issues that are omitted from this argument that are directly pertinent to the cosmetology sector. One is that cosmetology schools are typically small (and offer only a few CIP-code programs) – the market might be therefore be thought of as reasonably competitive according to FTC criteria. The other issue is that the market has a clear licensing system: schools whose students fail the licensing test are under a strict market test. It may be worth a proper examination of how well the licensing serves as a quality control check. Also, given these market-like features, it may pay to look more closely at the informational requirements for colleges prior to enrolling students. Often, economists prefer regulatory solutions that force information disclosure over solutions that prescribe enrollment quotas.

Fundamentally, the regulation is predicated on an ability to correctly and fully calculate the returns to a specific program. As noted above, there are some doubts that the current framework does this. The results from the RIA (of a significant impact on cosmetology schools) contrast markedly with the optimistic reports on the cosmetology sector from the BLS (see Section 2 above). It may be worth further investigation of these labor market issues, which might include: generating independent calculations of the returns to cosmetology programs; documenting occupational demand and the path of wages over time and life course; and investigation of the validity of the SSA earnings data.

Finally, the regulation appears to estimate very low compliance costs for institutions (see Section 5). These compliance costs may be explored with case-study pilot applications at individual colleges.



**Table 1**  
**Impact Across the For-Profit Sectors**

	Change in student numbers		Change in revenue	
	To/from colleges in other sectors	In/out of college system	To/from colleges in other sectors	In/out of college system
<b>2-year for-profit sector:</b>				
For colleges failing the tests	-8,000 to -14,000	-6,000 to -12,000	-\$75m to -\$135m	-\$57m to -\$114m
For colleges passing the tests	+2,000 to +4,000	0*	+\$38 to +\$71m	0*
<b>&lt; 2-year for-profit sector:</b>				
For colleges failing the tests	-2,000 to -3,000	-1,000 to -3,000	-\$12m to -\$22m	-\$4m to -\$7m
For colleges passing the tests	+1,000 to +2,000	0*	+\$15m to +\$28m	0*

Notes: 2010 dollars. Other sectors are: four-year public and private institutions and either 2-year colleges or less than 2-year colleges. \*Assumed zero: no new college entrants as a result of regulation.  
Sources: Regulatory Impact Assessment, Tables J-7, J-8, J-9, J-10.

**Table 2**  
**Impact Within the For-Profit Sectors from Ineligible Programs**

	Student numbers			Revenue from students who		
	Complete existing program	Switch college in same sector	Switch program at same college	Complete existing program	Switch college in same sector	Switch program at same college
<b>2-year for-profit sector</b>	33,600- 55,900	18,400- 33,400	23,300- 34,400	\$318m -\$529m	\$221m- \$264m	\$174m- \$316m
<b>&lt; 2-year for-profit sector</b>	7,500- 12,400	4,000- 7,300	4,600- 6,800	\$53m- \$88m	\$28m- \$52m	\$31m- \$45m

Notes: 2010 dollars. Sources: Regulatory Impact Assessment, Tables J-11, panels 4 and 5.

## Endnotes

- <sup>1</sup> The model is often attributed to Becker, GS. 1964. *Human Capital*. University of Chicago Press: Chicago, IL.
- <sup>2</sup> As summarized by Baum and Schwartz (2006, page 11, emphasis added): “There can be no single percentage that answers the question of how much students can borrow without risking repayment difficulties. Those with higher incomes can afford to devote a higher proportion of their incomes to debt payment without sacrificing basic expenditures. As the life-cycle hypothesis suggests, younger people can carry higher debt-service ratios than those who are older or who have greater family obligations. The amount of education debt that will put an individual in financial jeopardy depends on the extent of their other debts, so the priority an individual places on education relative to housing and other forms of consumption is also relevant. Geographical differences in the cost of living are also important.” See Baum, S and S Schwartz. 2006. How much debt is too much? Defining benchmarks for manageable student debt. The College Board, New York.
- <sup>3</sup> Belfield, CR and IIM Levin. 2007. *The Price We Pay: The Economic and Social Costs of Inadequate Education*. Brookings Institution Press: Washington, DC.
- <sup>4</sup> There is no evidence that these social benefits are restricted to particular types of degree, i.e., students in directly vocational subjects are just as likely to yield social benefits as those studying more esoteric subjects.
- <sup>5</sup> See Olsen, A and R Hudson. 2009. Social Security Administration’s Master Earnings File: Background Information. *Social Security Bulletin*, **69**, 29-45.
- <sup>6</sup> Sabelhaus, J and J Song. 2010. The great moderation in micro labor earnings. *Journal of Monetary Economics*, **57**, 391-403. Auten, G and G Gee. Income Mobility in the United States: New Evidence from Income Tax Data. *National Tax Journal*, **62**, 301-328.
- <sup>7</sup> Bowen, WG, Chingos, M, and MS McPherson. 2009. *Crossing the Finish Line: Completing College at America’s Public Universities*. Princeton University Press: Princeton, NJ.
- <sup>8</sup> Carnevale, AP, Smith, NP, and J Strohl. 2010. Help Wanted. Projections of Jobs and Education Requirements through 2018. Monograph, Georgetown University, Center on Education and the Workforce.
- <sup>9</sup> GAO. 1997. Millions spent to train students for over-supplied occupations. HEHS 97-104: Washington, DC.
- <sup>10</sup> BLS. 2010. *Occupational Outlook Handbook 2010-2011*. [www.bls.gov/oco/ocos332.htm](http://www.bls.gov/oco/ocos332.htm).
- <sup>11</sup> Guryan, J and M Thompson. 2010. Report on Gainful Employment: Executive Summary. Charles River Associates, Tallahassee, FL.
- <sup>12</sup> Similar concerns were raised regarding earlier versions of the proposed definition, see Kantrowitz, M. What is Gainful Employment? What is Affordable Debt? Monograph, [www.finaid.org](http://www.finaid.org).
- <sup>13</sup> The RIA combines options (3) and (4); it is also not clear if the RIA is modeling annual effects or a one-time effect of introducing the regulation.
- <sup>14</sup> One example of the possible discrepancy between the overall model and the cosmetology sector relates to ownership. The RIA is calibrated on the assumption that 77% of the sector’s revenues are controlled by 38 corporate owners. Using IPEDS data, the relevant percentage for the cosmetology sector is 17%.
- <sup>15</sup> Lombard, K. 2001. Female self-employment and the demand for flexible, nonstandard work schedules. *Economic Inquiry*, **39**, 214-230.

<sup>16</sup> It is also atypical because of the high proportions who work part-time (29%) or are on variable schedules (14%).

<sup>17</sup> Hamilton, BH. 2000. Does entrepreneurship pay? An empirical analysis of the returns to self-employment. *Journal of Political Economy*, **108**, 604-631.

<sup>18</sup> Fairlie, RW. 2005. Self-employment, entrepreneurship, and the NLSY79. *Monthly Labor Review*, **128**, 40-47.

<sup>19</sup> Tables O and T, Regulatory Impact Assessment.

