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Regarding the Revised Proposed Regulations of Private Occupational Schools
at 230 MASS. CODE REGS. 12.00-17.00

The Project on Predatory Student Lending serves low-income student loan borrowers in Massachusetts, many of whom have experienced unfair and deceptive practices at the hands of for-profit and occupational schools. In March, we submitted comments praising a number of features of the Massachusetts Division of Professional Licensure's proposed regulations of Private Occupational Schools.¹ In particular, we expressed our support for the Division's proposed mandatory seventy-two hour cooling-off period, during which private occupational schools were forbidden from accepting signed enrollment agreements,² and for the opportunity to withdraw from a program without incurring significant debt within the first ten days or ten percent of the program. To our dismay, the Division recently released Revised Proposed Regulations that significantly curtail or eliminate several central protections for students and prospective students. The revisions favor schools at substantial expense to the students least able to bear those costs. We submit these further comments to express our disappointment in these changes, and to encourage the Division to reconsider its removal of important safeguards, especially the seventy-two hour cooling-off period.

I. The Division Should Re-Insert the 72-Hour Cooling-Off Period

Unlike other proposed protections, the cooling-off period specifically counteracts one of the industry's most problematic and common practices—high-pressure recruiting tactics that induce students to enroll without examining disclosures or evaluating other options. Empirical evidence suggests that regulations imposing a delay before consummation of transactions may be more effective in protecting consumers than providing or extending a right of rescission. Legal research shows that even dissatisfied consumers are not very likely to take advantage of extended rights of rescission.³ Psychological, economic, and behavioral research have identified an “endowment effect,” by which consumers are unreasonably reluctant to part with purchases they

¹ See Testimony of Toby Merrill to the Division of Professional Licensure submitted March 20, 2014.

² *Id.* at 5.

³ See Jeff Govern, *Written Notice of Cooling-Off Periods*, U. PITTSBURGH L. REV. (forthcoming), available at <http://ssrn.com/abstract=2103807>.

have made, even before they have actually possessed the purchased item.⁴ Taken together, this research indicates that the manipulation of consumers arising out of high-pressure sales environments is unlikely to be remedied by an expanded or extended right of rescission. In other words, students are unlikely to take advantage of an extended right to rescission by withdrawing from school within the first ten days or ten percent of the program even if they are dissatisfied.⁵ Although we recognize that a cooling-off period may impose a cost on some schools, the absence of a cooling-off period imposes significant costs on many students who have succumbed to aggressive marketing recruiting. As between the students and the schools, the schools are better equipped to predict, prepare for, and bear those costs than the prospective students of Massachusetts private occupational schools. The removal of the cooling-off period from the draft regulations is a significant loss to prospective students in Massachusetts.

II. The Division Should Reverse Changes That Dramatically Increase Costs to Students Who Withdraw within the First Ten Days

In addition to the removal of the seventy-two hour cooling-off period, other substantive changes to the proposed regulations operate to the detriment of consumers and the benefit of businesses. Notably, the changes permit schools to keep significantly more money—up to 25% of total program cost—when students exercise their right to withdraw within ten days or 10% of the program, and remove the requirement that schools share copies of responses to written student complaints with the Division of Professional Licensure.

The first draft of the Proposed Regulations expanded upon the statutory right of rescission and refund that has been Massachusetts law since 1974.⁶ That statute, in its current form, requires private occupational schools to provide full refunds to students who withdraw in writing within five days of signing the contract and before they have begun.⁷ After the first five days, up until the program begins, students who withdraw in writing are entitled to full refunds minus administrative costs, which are capped at \$50.⁸ Students who withdraw in writing in the first quarter of the program are entitled to “at least seventy-five percent of the tuition, less [administrative costs capped at \$50];” in the second quarter, at least fifty percent of tuition less administrative costs; in the third quarter, at least twenty-five percent of tuition less administrative costs. The Proposed Regulations released in March improved the statutory right of rescission, requiring schools to provide “a full refund of all fees and costs” less administrative costs capped at \$50 to students who withdraw within ten days of commencement of a program.⁹

⁴ See Jon Hanson & Douglas Kysar, *Taking Behavioralism Seriously: The Problem of Market Manipulation*, 74 NYU L. REV 630, 674-75 (1999); Sankar Sen & Eric Johnson, *Mere-Possession Effects without Possession in Consumer Choice*, 24 J. CONSUMER RESEARCH 105 (1997) (finding that endowment or possession effects can “stem from psychological commitment to prior decisions arising from undue attention to sunk costs implicit in these decisions” and can be extended to contexts in which the consumer does not actually possess the product).

⁵ See 230 C.M.R. 15.04(6) (proposed right of rescission); see also *infra* Section II (explaining why students will be entitled to significantly smaller refunds under the revised Proposed Regulations).

⁶ MASS. GEN. LAWS c. 255 § 13K.

⁷ MASS. GEN. LAWS c. 255 § 13K(2).

⁸ MASS. GEN. LAWS c. 255 § 13K(7).

⁹ 230 C.M.R. 15.04(4) (draft released March 2014).

The current draft significantly shrinks both the number of students entitled to refunds beyond the statutory minimum and the amount to which students are entitled. The revised Proposed Regulations exempt programs less than 80 hours in duration and \$2,000 in total cost from compliance.¹⁰ Even more troublingly, the revised Proposed Regulations allow schools to keep “actual reasonable costs of non-reusable supplies or Equipment where a School provided the student with the supplies or Equipment, so long as the student receives the refund to which they are entitled under M.G.L. c. 255, § 13K.”¹¹ The calculation of the refund due to a withdrawing student pursuant to these authorities is summarized in the following table.

Timeframe		Refund Calculation Pursuant to:		
		Statute (c. 255 §13K)	First Draft Regulations	Second Draft Regulations
Before program begins	Within 5 days of contract	All money paid		
	After 5 days	All money paid less admin. costs up to \$50		
After program begins	First ten days or 10%	At least 75% of tuition less admin. costs up to \$50	All fees and costs less admin. costs up to \$50	All money paid less admin. costs up to \$50 and less “actual reasonable costs of non-reusable supplies or equipment” provided by the school, so long as the student receives at least the minimum to which they are entitled under MGL c. 255 § 13K
	First Quarter thereafter		At least 75% of tuition less admin. costs up to \$50	
	Second Quarter	At least 50% of tuition less admin. costs up to \$50		
	Third Quarter	At least 25% of tuition less admin. costs up to \$50		

At the September 5th meeting of the Advisory Council on Private Occupational Schools, the Division did not have examples or estimated costs of non-reusable supplies or Equipment. School owners present at the meeting suggested that non-reusable supplies would include laptop computers, tools for machine repair, stethoscopes and other medical equipment. These items were deemed non-reusable because the schools had informed students that they would receive “new” items, and/or because students can and sometimes do damage the items. Schools appear to have pushed for this provision in order to retain expensive supplies, driving down the amount they will be required to provide as a refund, and potentially eliminating much of the benefit implied by the revised Proposed Regulation. To understand how the changes to the proposed regulations harm consumers, consider the following examples of programs offered by private occupational schools in Massachusetts.

¹⁰ 230 C.M.R. 15.04(6) (draft released August 2014). Thus, a student who enrolls in a program that meets for 35 hours per week for 11 business days and costs \$1,999 and withdraws on the morning of the second class day would be entitled to a refund of \$1,449.25 under the statute. The school would keep \$549.75.

¹¹ 230 C.M.R. 15.04(6) (draft released August 2014).

Program A's total cost of attendance is \$12,381.75, which includes \$1,593.75 in student supplies, and \$10,500 in tuition

Timeframe for withdrawal	Refund Calculated Pursuant to:		
	Statute (c. 255 §13K)	First Draft Regulations	Second Draft Regulations
First ten days or 10%	\$7,825 (still owes \$4,556.75)	\$12,331.75 (still owes \$50)	\$10,738 (still owes \$1,643.75)
First quarter thereafter		\$7,825 (still owes \$4,556.75)	

Program B's total cost of attendance is \$15,989, which includes \$1,300 for books, \$100 for uniforms, and \$13,990 in tuition

Timeframe for withdrawal	Refund Calculated Pursuant to:		
	Statute (c. 255 §13K)	First Draft Regulations	Second Draft Regulations
First ten days or 10%	\$10,442.50 (still owes \$5,546.50)	\$15,939 (still owes \$50)	\$14,539 (still owes \$1,450)
First quarter thereafter		\$10,442.50 (still owes \$5,546.50)	

Program C's total cost of attendance is \$21,479, which includes \$2,100 for books, \$750 for software, \$60 for uniforms, and \$17,990 in tuition

Timeframe for withdrawal	Refund Calculated Pursuant to:		
	Statute (c. 255 §13K)	First Draft Regulations	Second Draft Regulations
First ten days or 10%	\$13,442.50 (still owes \$8,036.50)	\$21,429 (still owes \$50)	\$18,519 (still owes \$2,960)
First quarter thereafter		\$13,442.50 (still owes \$8,036.50)	

As is evident from these examples, the statutory minimum refund does not provide a safeguard against high charges to withdrawing students for expensive supplies and equipment. Although schools may have reasonable concerns about the cost of supplies and equipment they deem non-reusable, certainly the schools are in a better position than the students either to make adjustments to the curriculum such that the supplies need not be distributed within the first ten days, or to adjust students' expectations about whether they will be receiving new equipment. Students, by contrast, are ill-equipped to choose between delaying use of mandatory tools as they begin a new educational program and bearing significant debt down the line. Schools with concerns about covering the cost of expensive supplies should alter their programming to address those concerns, rather than passing those costs to students.

One, two, or five thousand dollars is far beyond the reach of many of our clients, and an enormous penalty imposed as part of a supposed "right of rescission." The revised regulations protect schools' coffers by providing students the opportunity for a high-cost foray, rather than a ten-day window to withdraw without incurring significant financial obligation. The Division should reverse this change.

III. The Division Should Require Schools to Provide Copies of Responses to Written Complaints

Finally, the Division has removed the requirement that schools send copies of their responses to written student complaints to the Division. Apparently, schools complained that this requirement was unnecessary and burdensome.¹² It is hard to imagine what burden would be created by e-mailing or uploading a document that is undoubtedly already in electronic format. Even if the Division were to do no more with such submissions than keep them in an electronic inbox for possible future reference, sending the responses to the Division would nonetheless incentivize schools to respond reasonably. Moreover, a high volume of responses to complaints would alert the Division to possible problems—again, even in the absence of any examination of the letters by the Division. Requiring schools to submit these letters to the Division is an almost cost-free mechanism that provides some protection to students who experience problems with their schools and some notice to the Division about the volume of these problems. It is unclear who would benefit from its removal other than schools hoping to avoid regulatory attention.

As discussed in our March comments, we appreciate the components of the Proposed Regulations that increase protections for students and potential students, including limitations on unsolicited contact, the opportunity to withdraw without penalty when expectations of financial aid are not met, and access to the refunds to which students should be entitled even when they do not follow schools' formal withdrawal policies. We strongly urge the Division to reconsider the revisions that cut at the two components of the "escape hatch" for the too-many students who enroll in unsuitable programs as a result of high-pressure recruiting or false promises, and are saddled with debt that hinders economic opportunity for decades thereafter.

Thank you for your consideration of this testimony. Please feel free to contact Toby Merrill if you have any questions or comments, at 617-390-2576 or tomerrill@law.harvard.edu.

¹² Statement of Board Counsel Rachel Pauze at the September 5 meeting of the Advisory Council on Private Occupational Schools.