Written Comment of Toby Merrill, Director of the Project on Predatory Student Lending, Legal Services Center of Harvard Law School
To the Division of Professional Licensure Office of Private Occupational School Education
In Response to the Notice of Meeting for March 22, 2013
Regarding Licensing and Regulation by DPL of Private Occupational Schools

Submitted March 21, 2013

My name is Toby Merrill. I am an attorney at the Legal Services Center of Harvard Law School, and the director of the Project on Predatory Student Lending. The Legal Services Center provides civil legal services to over 1,200 low-income clients annually, representing families in debt collection lawsuits, bankruptcies, eviction proceedings, domestic relations cases, and applications for disability and veterans’ benefits.

The Project on Predatory Student Lending is dedicated to helping low-income student loan borrowers who have been victimized by predatory practices of for-profit schools. We work in collaboration with nonprofit organizations such as Compass Working Capital, Year Up, and Crittenton Women's Union.

Through our clients and our community partners, we are familiar with the abusive methods and practices employed by many for-profit schools, including deceptive advertisements, unrelenting recruiting, the absence of promised academic and career development support, and draconian contracts designed for people with non-traditional backgrounds or those just barely old enough to sign. Our clients come to us with crushing and unaffordable student loan debt in the form of federal, private, and institutional student loans. Their debt often results from enrollment in programs that they never completed, in service of credentials they never obtained. Others complete programs only to find none of the promised employment opportunities that induced them to incur the debt. Many of them have unknowingly signed enrollment agreements containing sweeping arbitration clauses purporting to waive their right to seek relief in court.

The results of these abusive practices are disastrous for borrowers, especially when combined with the presumption of non-dischargeability of student debt in bankruptcy. A recent investigation of for-profit schools, including occupational schools, by the Senate Health, Education, Labor and Pensions (HELP) Committee revealed that 57% of students left for-profit schools without completing their program.1 Students in certificate programs dropped out at a

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rate of 38.5%. The National Center for Education Statistics found that approximately 40% of students seeking certificates or associates degrees from for-profit colleges failed to complete those degrees within 150% of the normal time required.

Students who fail to complete non-degree programs are significantly more likely to default on their loans. 22% of students of for-profit schools default on federal loans within three years, and about 46% default over the lifetime of the loan. Multiple investigations suggest that such statistics dramatically underreport defaults on federal loans. Moreover, students at for-profit schools are much more likely to take out private or institutional loans, which lack the protections of federal loans and are not included in the default rates measured and reported by the government. Although less data is publicly available for defaults on private loans, one major for-profit institution reported to the SEC that it expected to discount its institutional loans by 55%. Taken together, these data show a tremendous risk of dropout and loan default for students of private occupational schools.

The consequences of such defaults are severe and long-lasting. Without the school, lender, or servicer taking any action in court whatsoever, federal loans can be collected through garnishment of wages, tax refunds and earned income tax credits, and federal benefits. Most student loans survive bankruptcy. Defaulted student loan borrowers are also subjected to the extraordinarily lawless practices of the debt collection industry: our clients receive abusive and deceptive letters and are harassed to the point of changing their phone numbers. Defaulted loans make a student ineligible for future student loans, thereby preventing the borrower from ever obtaining or completing her education. As a result, defaulted student loans prevent many of our clients from pursuing educational opportunities that would permit them to pay off their existing debt and advance their career goals. With incomplete or low-value degrees and significant debt, they are barred from ever improving their situation.

For these reasons, I write to encourage the Division of Professional Licensure (DPL) to strengthen regulation and enforcement regarding private occupational schools’ advertisements, and their enrollment contracts and refund processes.

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2 Id. at 74; id. at 74 n.264.
4 A quarter of borrowers who completed non-degree programs in 2001 defaulted on their loans, as compared to a third of borrowers who did not complete their programs. LAWRENCE GLADIEUX & LAURA PERNIA, NAT’L CTR. FOR PUBLIC POLICY & HIGHER EDUC., BORROWERS WHO DROP OUT: A NEGLECTED ASPECT OF THE COLLEGE STUDENT LOAN TREND 9 (2005), available at http://www.highereducation.org/reports/borrowing/borrowers.pdf.
5 FOR PROFIT HIGHER EDUCATION, supra note 1, at 114.
6 Id. at 18.
7 See, e.g., FOR PROFIT HIGHER EDUCATION, supra note 1, at 116-17; Mark Kantrowitz, Identifying Colleges with Aggressive Management of Cohort Default Rates, FINAID.ORG (Sept. 21, 2010), http://www.finaid.org/educators/20100921/aggressivedefaultmanagement.pdf.
8 In the 2007-08 school year, 42% of students at for-profit schools borrowed from private or institutional lenders, compared to 14% of all students, and 4% at two-year in 08-08 compared to 14% overall, and 4% and two-year public. PROJECT ON STUDENT DEBT, PRIVATE LOANS: FACTS AND TRENDS (2011), http://projectonstudentdebt.org/files/pub/private_loan_facts_trends_09.pdf
9 CONSUMER FIN. PROT. BUREAU, PRIVATE STUDENT LOANS 34 (2012).
Advertisements

Advertising by private occupational schools is extremely effective at attracting students. Asked about the decision to attend a certain school, most of our clients mention an advertisement first. Ads reach potential students through the internet, through print media, through billboards, through the radio, through the mail, and on the MBTA. A group of major for-profit schools spent almost 23% of 2009 revenues on marketing, advertising, recruiting, and admissions staffing, and about 17% on instruction.\(^1\)

In addition to many types of advertising, private occupational schools' huge marketing budgets also fund large and aggressive recruitment departments.\(^2\) One of our clients, a nineteen-year-old single mother, was called by a recruiter at a local occupational school every single day until she agreed to enroll, thereby committing herself to paying over $15,000. Her experience was not isolated. In 2010, the Government Accountability Office investigated the recruitment practices of schools in the for-profit industry, including occupational schools. Four investigators who filled out web forms began receiving phone calls within five minutes of completing the forms, receiving a total of 436 phone calls within thirty days.\(^3\)

Both advertising and live recruiters mislead prospective students, pushing for enrollment without regard for the student's likelihood of completing the program or ability to support the debt. Two of my clients were guaranteed jobs as medical assistants with salaries of approximately $50,000 by an "admissions officer" of a private vocational school. Another was told that a graphic design program placed many students in careers at high-end movie studios and video game companies in California. No evidence supports either of these claims. Every single for-profit school investigated by the Government Accountability Office made deceptive or otherwise problematic statements to undercover investigators.\(^4\) Many of the deceptive claims induce students to enroll by promising or insinuating extraordinary post-completion employment and income that bears no relationship to students' actual post-graduation prospects.\(^5\)

Massachusetts has adopted robust laws and regulations governing marketing and recruitment. The Act Relative to Oversight of Private Occupational Schools provides that "[a]ny pupil of a private occupational school who is misled by an officer or representative of the school or by any advertisement or circular issued by the school, which representation is false, deceptive or misleading may recover treble damages or $10,000, whichever is greater."\(^6\) Current Department of Elementary and Secondary Education (DESE) regulations prohibit schools from advertising or implying "that the school guarantees employment, or specify a wage per hour or gross salary, for

\(^1\) For-Profit Higher Education, supra note 1, at 81.
\(^4\) Id. at 7.
\(^5\) See For-Profit Higher Education, supra note 1, at 164 (detailing findings of various investigations into fraudulent placement claims of for-profit schools).
those who complete a course or program offered by the school.”17 Regulations of the Office of the Attorney General, applied to private occupational schools by DESE, prohibit a panoply of deceptive advertising and marketing tactics and practices, including false representations or implications as to employment, salary, opportunities in a field, career services, and levels of instruction.18

Although the language of Massachusetts’ laws and regulations prohibits abusive practices, flagrant violations abound. Several barriers obstruct the effectiveness of private enforcement under the current regulatory scheme. First, many schools’ enrollment agreements contain sweeping arbitration agreements, which present an obstacle for students seeking to enforce any of these laws and regulations in court.19 These arbitration clauses purport to limit or prohibit discovery and to bar appeals. Second, by the time a borrower’s problems become serious enough to cause her to seek legal counsel, claims pursuant to the Massachusetts Consumer Protection Act are frequently time-barred. Finally, even if the borrower seeks counsel within the statute of limitations, there are few legal resources available to help student loan borrowers, especially those seeking relief from the effects of unfair practices.20 A client whose claim a state investigator later found to “indicate [the school’s] noncompliance with” regulations prohibiting deceptive marketing was told by the first attorney she contacted that he could not help her because it was too difficult to pursue a claim “for misleading students or providing an incompetent education.”

For these reasons, among others, it is problematic to expect consumers to be able to enforce their rights to be free from unfair and deceptive marketing and recruitment practices after they occur, and thereby deter schools from engaging in unlawful conduct. Instead, DPL should take steps to prevent such abuses and rein in deceptive marketing activities by requiring private occupational schools to submit their advertisements and other marketing materials as part of the licensure and renewal process, and to retain complete records of all advertising.

Other states require various types of schools to submit or retain advertisements and other promotional materials under certain limited circumstances. In California, a non-accredited institution’s application for approval to offer and operate educational programs must include “copies of advertising and other statements disseminated to the public in any manner by the institution or its representatives” concerning the school or its programs, including the script of any advertisements broadcast on television or radio.21 Private business and vocational schools seeking approval of an extension site in Illinois must submit information about the recruiting

17 603 MASS. CODE REGS. 3.14.
18 603 MASS. CODE REGS. 3.10.
19 For example, one agreement seeks to arbitrate “[a]ny disputes, claims, or controversies between me and School arising out of or relating to (i) this Agreement; (ii) any relationship resulting from this Agreement, or any activities in connection with the Agreement (including, without limitation, the Truth-in-Lending Disclosure Statement[s] or the underwriting, servicing or collection of the amounts financed under this Agreement); (iv) any claim, no matter how described, pleaded, or styled, relating, in any manner, to any act or omission regarding in any way the obligations of the parties to this Agreement; or (v) any objection to arbitrability or the existence, scope, validity, construction, or enforceability of this Arbitration Agreement.”
21 CAL. CODE REGS. tit. 5, § 71200.
process, and may be required at any time to “furnish proof to the Board of any of its advertising claims.” Maryland requires out-of-state schools to submit copies of advertisements both for the initial approval process and for renewal of approval. And in Colorado, permits for an agent to represent an out-of-state private occupational school require the submission of “[c]opies of all media advertising and promotional literature intended for use in Colorado.”

DPL should strengthen the protections for students at private occupational schools by requiring submission of advertising materials with applications for licenses and renewals. Such a disclosure requirement would both allow DPL to review these materials at a time that it can easily act to protect students, and would likely cause schools to review promotional materials more carefully, thereby providing more effective deterrence when combined with current substantive regulations.

Rescission and Refunds

DPL should ensure that the many students who do not complete programs have a realistic opportunity to obtain tuition refunds, an opportunity that Massachusetts law has long intended to provide. DPL can facilitate tuition refunds in three ways. First, DPL should vigorously address schools’ continuing non-compliance with existing law and regulation regarding tuition refunds. Second, DPL should promulgate additional regulations to improve students’ access to the refunds to which they are entitled. Third, DPL should expand access to refunds for students whose promised financial aid does not materialize.

Massachusetts has long required that enrollment agreements of entities now classified as private occupational schools include a five-day right of rescission and a prescribed right to a refund for students who withdraw. When the Massachusetts legislature added this provision in 1974, the law required for-profit trade, vocational, technical, correspondence, dance, professional and proprietary schools to include in their written contracts with students specific language providing a right of termination and a right to a pro rata refund—less administrative costs capped at the lesser of five percent of the contract price or fifty dollars, and which must be itemized. Every iteration of this statutory protection has required this language to appear in a certain size on the contract, and has required students to inform the school of their wish to terminate the contract in writing, effective on the date mailed. Non-compliance with this provision is both a violation of

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22 ILL. ADMIN. CODE tit. 23, § 1095.40(e)(2).
23 ILL. ADMIN. CODE tit. 23, § 1095.40(e)(3) (“If proof acceptable to the Board cannot be furnished, a retraction of the advertising claims, published in the same manner as the claims themselves, must be published by the institution and continuation of that advertising shall constitute cause for revocation of the institution’s permit of approval.”).
24 MD. CODE REGS. 13B.02.01.07.D(3)(p).
25 MD. CODE REGS. 13B.02.01.08.B(4)(p).
26 8 COLO. CODE REGS. § 1504-1:V.E.1.c.
28 Id.; Act Exempting Degree Granting Proprietary Institutions from the Law Permitting Students to Receive a Pro Rata Refund of Tuition if They Terminate Their Attendance Therein, 1978 Mass. Acts ch. 533 (exempting proprietary schools with the authority to grant degrees); An Act Further Regulating the Termination of Certain Personal Service Contracts, 1982 Mass. Acts ch. 159 (converting “pro rata” to a specific list of refund amounts: a full refund if within five days and before commencement of the program; a full refund less administrative costs if
the Consumer Protection Act and punishable by a fine and imprisonment. As of August 1 2012, private occupational schools must submit “the form and content of the student enrollment agreement” to a state auditor as part of the licensing process.\(^\text{29}\)

In spite of this long-established, unequivocal requirement, many students are still burdened by significant student loan debt despite having left school very soon after enrolling. This problem is caused in part by schools’ non-compliance with existing requirements, and in part by impractical implementation.

Anecdotal evidence suggests that schools are not complying with Massachusetts refund provision requirements. One of our clients enrolled at the now-defunct American Career Institute (ACI) in late 2012, less than three months before it shut down without warning on January 9, 2013. The relevant portion of the enrollment agreement—which also served as an application—is reproduced at its actual size on the next page. Despite the statutory requirement that the language appear “on the front of said contract above the place for the student’s signature in a type size at least as large as the largest type size appearing in any other part of the said contract,\(^\text{30}\)” the two cancellation policies are buried on the second of two dense, legal-sized pages, appear to be at least one point smaller than almost all of the text on the first page of the contract, and are distant from any signature line. The “list of . . . administrative costs . . . included below” appears to refer to the bullet point: “Administrative Costs Equal: $50.00.” The ACI enrollment contract exemplifies the way in which private occupational schools continue to bury the right to a refund despite existing requirements, and demonstrate why DPL must maintain vigilance.

Second, deficiencies in existing regulations often prevent students from obtaining the benefit of a refund to which they are entitled. One such deficiency is the requirement that a student communicate her withdrawal in writing.\(^\text{31}\) Without reading the fine print in the middle of the second page of an enrollment contract, the client discussed above would never know of her obligation to withdraw in writing, and if she wished to withdraw from ACI, would likely have communicated that verbally or electronically. Only one of my dozens of clients who have withdrawn from school has ever submitted a written withdrawal; the rest have withdrawn less formally—over the phone, in person, by email, or in some cases, by ceasing to attend. Their technical mistake of not withdrawing in writing should not cost them tens of thousands of dollars of non-dischargeable debt. When students enroll, schools should verbally inform them of the written withdrawal requirement and provide a standardized or approved withdrawal form along

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\(^\text{29}\) MASS. GEN. LAWS ch. 112, § 263(d) (2012); see also 603 MASS CODE REGS. 3.13(1) (“Each school shall use a student enrollment contract, and shall provide each student with a copy of his/her enrollment contract. The enrollment contract shall include the following information: the title of the course or program to be taken by the student; the total number of instructional hours to be taken by the student; the tuition charges and any other charges; the method of payment; the refund policy; the entrance requirements; and the period beyond which late registration will not be accepted.”).

\(^\text{30}\) MASS. GEN. LAWS ch. 255, § 13K.

\(^\text{31}\) This requirement is likely to affect 40% of students enrolling at private occupational schools. See supra text accompanying notes 2-3.
BUYER’S RIGHT TO CANCEL: You may terminate this agreement at any time. Please see refund policy below.

REFUND AND CANCELLATION POLICY: American Career Institute abides by two refund policies. One policy is required by state regulations and the second policy is the school’s policy. Both refund calculations will be made for a student who withdraws, drops out, or is dismissed from American Career Institute and the one that provides the greater refund to the student will be used. The refund will be made within 45 days of the date of determination of the student’s withdrawal.

1. You may terminate this agreement at any time.
2. If you terminate this agreement within five days you will receive a refund of all monies paid, provided that you have not commenced the program.
3. If you subsequently terminate this agreement prior to the commencement of the program, you will receive a refund of all monies paid, less the actual reasonable administrative costs described in paragraph 7.
4. If you terminate this agreement during the first quarter of the program, you will receive a refund of at least seventy-five percent of the tuition, less the actual reasonable administrative costs described in paragraph 7.
5. If you terminate this agreement during the second quarter of the program, you will receive a refund of at least fifty percent of the tuition, less the actual reasonable administrative costs described in paragraph 7.
6. If you terminate this agreement during the third quarter of the program, you will receive a refund of at least twenty-five percent of the tuition, less the actual reasonable administrative costs described in paragraph 7.
7. If you terminate this agreement after the initial five day period, you will be responsible for actual reasonable administrative costs incurred by the school to enroll you and to process your application, which administrative costs shall not exceed fifty dollars or five percent of the contract price, whichever is less. A list of such administrative costs is included below and made a part of this agreement.

Administrative Costs Equal $50.00

8. If you wish to terminate this agreement, you must inform the school in writing of your termination, which will become effective on the day such writing is mailed.
9. The school is not obligated to provide any refund if you terminate this agreement during the fourth quarter of the program.

REFUND AND CANCELLATION POLICY 2 – ACCEPT REFUND POLICY

Refund Due Dates:
1. If an applicant never attends class (no-show) or cancels the contract prior to the class start date, all refunds due will be made within thirty (30) calendar days of the first scheduled day of class or the date of cancellation, whichever is earlier.
2. For an enrolled student, the refund due will be calculated using the last date of attendance (LDA) and be paid within forty-five (45) calendar days from the documented date of determination. The date of determination is the date the student gives written or verbal notice of withdrawal to ACI or the date ACI terminates the student, by applying the ACI attendance, conduct, or Satisfactory Academic Progress policy.

Rejection for Cancellation before the start of class:
1. If an applicant is rejected for enrolment by ACI or if a prospective international student has failed to complete the required visa application, a full refund of all tuition monies paid will be made to the applicant.
2. If ACI cancels a program subsequent to a student’s enrolment, the institution will refund all monies paid by the student.
3. If an applicant accepted by ACI cancels prior to the start of scheduled classes or never attends class (no-shows), ACI will refund all monies paid, less any non-refundable application/registration fees of not more than $25.

Withdrawal or Termination After Start of Class:
1. During the first week of classes, tuition charges withheld will not exceed 10 percent (10%) of the stated tuition up to a maximum of $500. When determining the number of weeks completed by the student, ACI will consider a partial week the same as if a whole week, provided the student was present at least one day during the scheduled week.
2. After the first week and through fifty percent (50%) of the period of training and financial obligation, tuition charges retained will not exceed a pro-rata portion of tuition for the training period completed, plus ten percent (10%) of the unused tuition for the period of training that was not completed.
3. After fifty percent (50%) of the period of financial obligation is completed, ACI will retain the full tuition.

Figure 1: ACI Enrollment Contract Withdrawal Provision

with the other written materials required to be provided upon enrollment. Schools should send that form to students who notify the school that they wish to withdraw by non-written means, and to students who have failed to attend for a period that indicates a wish to withdraw or that would prevent the student from successfully completing the program. Requiring these actions would prevent schools from claiming thousands of dollars to which they are not entitled on the basis of a technicality.

Another way to improve students’ access to refunds is by requiring schools to confirm students’ desire to continue to attend within a specified time period that would maximize their refund upon withdrawal. Many students realize very quickly upon attendance that a program is beyond their capacity or not what they were expecting. Schools could help these students by reminding them of their right of rescission before they incur significant financial obligations. 32

32 Two major for-profit institutions, Kaplan Higher Education and the University of Phoenix, have launched “trial periods.” Under fire from regulators and the media, Kaplan launched the “Kaplan Commitment” program in 2010, which allows students to withdraw within three to five weeks of enrolling and pay only the application fee. Paul Fain, More Selective For-Profits, INSIDE HIGHER ED (Nov. 11, 2011), http://www.insidehighered.com/news/2011/11/11 enrollments-tumble-profit-colleges. Kaplan attributes an 11% drop in new enrollment to the program. Id. The University of Phoenix introduced a pass-fail, tuition-free, three-week orientation for new students entering with fewer than twenty-four credits in 2011. Letter from Dr. Bill Peppicello, President, University of Phoenix (Mar. 4, 2011), Introducing the New Student Orientation System, http://www.phoenix.edu/colleges_divisions/office-of-the-president/communications/new-student-orientation-program.html. The program does not allow students to experience substantive instruction, and instead covers topics
Third, students should be better protected from the harsh financial consequences of withdrawal by limiting students’ obligations when they are forced to withdraw because they do not qualify for financial aid. Recruiters often enroll students so quickly that the school cannot process their financial aid applications before the students begin attending. Many of my clients who have attended private vocational schools have enrolled one day and begun classes the next. Most are not assured of the status of their loans before they begin a program, and schools often notify students of problems with their loan approval several weeks into the program, by which time students’ right to a refund is diminished. Although the student’s enrollment in and attendance at the school was predicated on the loans promised, denial of the loans does not eradicate the student’s financial obligations to the school. These students have often been misled about the availability of financing, and should receive an extended right of rescission.\textsuperscript{33}

Stronger oversight of the withdrawal process and its implications for students’ financial futures is sorely needed. This need is even more urgent because students at private occupational schools are so much more likely to use private loans,\textsuperscript{34} which lack the humane softening of federal repayment options and policies. DPL can improve the withdrawal and refund process by increasing enforcement, removing existing roadblocks to students’ access to refunds, and expanding the right to rescission for especially vulnerable students.

\textbf{Conclusion}

On behalf of our clients, I urge you to consider augmenting DPL’s oversight of private occupational schools, and thank you for your consideration of this comment.

\textsuperscript{33} Colorado has prohibited schools from referring to collections agencies “[s]tudents who apply for and properly represent their financial aid application and do not qualify for financial aid within the first two weeks of classes and are accepted on the basis of forthcoming financial aid eligibility.” 8 COLO. CODE REGS. § 1504-1:VII:S (2011).

\textsuperscript{34} See supra note 8.