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Submitted to the Massachusetts Division of Professional Licensure

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

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The Project on Predatory Student Lending, within the Legal Services Center of Harvard Law School, serves low-income student loan borrowers who have been deceived and cheated by for-profit schools, leaving them with ruinous non-dischargeable debts and without marketable skills. We work in collaboration with other nonprofit organizations including Crittenton Women's Union and Compass Working Capital. The Legal Services Center provides civil legal services to over 1,000 low-income clients annually, representing individuals and families in debt collection lawsuits, bankruptcies, eviction proceedings, domestic relations cases, and cases involving disability and veterans' benefits. We thank the Division of Professional Licensure for the opportunity to submit this testimony.

In my work as the director of the Project on Predatory Student Lending and an attorney at the Legal Services Center, I provide information, advice, and representation to low-income current and former students and their family members who are suffering under the burden of student loan debt. I also provide information and assistance to others who serve these communities, including other legal services providers, financial counselors, and social services providers.

Our clients and those of our partner organizations are deeply affected by the regulations and enforcement actions now in the hands of the Division of Professional Licensure. For example, within weeks the abrupt closure of the American Career Institute (ACI) in January, 2013, multiple former students sought our help filling out paperwork to make claims for reimbursement from the state, and to obtain discharges of their federal loans. In the months since then, still more former ACI students have visited the Project with issues ranging from problems with their "teach out" experiences to false certification of their ability to benefit, all as a result of their enrollment at ACI. In addition to ACI, dozens of borrowers have contacted the Project with substantial debt stemming from other private occupational schools, some of which participate in federal student aid programs and are subject to the attendant federal regulations.

Through these clients and our community partners, we are familiar with some of most abusive and unfair practices employed by some private occupational schools in Massachusetts, including deceptive advertisements, unrelenting recruiting, the absence of promised academic and career development support, and draconian contracts presented to students 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.¹ 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 federal and private student loan debt in bankruptcy.

¹ A Senate Health, Education, Labor and Pensions (HELP) Committee report found that students in certificate programs dropped out at a rate of 38.5%. S. COMM. ON HEALTH, EDUC., LABOR, & PENSIONS, 112TH CONG., FOR PROFIT HIGHER EDUCATION: THE FAILURE TO SAFEGUARD THE FEDERAL INVESTMENT AND ENSURE STUDENT SUCCESS 74 (2012) (hereinafter FOR PROFIT HIGHER EDUCATION). 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. NAT'L CTR. FOR EDUC. STATISTICS, U.S. DEP'T OF EDUC., NCES 2012-045, THE CONDITION OF EDUCATION 2012 280 (2012).

The nearly 40% of students who do not complete their non-degree programs² are substantially more likely to default on their loans than students who finish.³ These data show that students of private occupational schools are at a tremendous risk of dropping out and defaulting on their loans, the consequences of which are severe and long-lasting. Without the school, lender, or servicer taking any action in court whatsoever, defaulted 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:⁴ many of our clients have received abusive and deceptive letters and have been harassed to the point of changing their phone numbers. Defaulted loans make a borrower ineligible for future student loans, thereby preventing her 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, we support many of the proposed regulations, and encourage DPL to interpret and enforce them in a manner that protects consumers seeking occupational or vocational training from unfair practices utilized at students' expense and without regard for their well-being.

Limiting Contact with Prospective Students

We strongly support DPL's limitation on repeated, unsolicited contact to two contacts in a one month period.⁵ Our clients' experiences mirror the governmental and media reports of aggressive recruiting bordering on harassment by private career schools.⁶ 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 and to commit herself to paying over \$15,000. A student looking for simple online disclosures inadvertently filled out a web form that led to him receiving over 100 calls that week.

While this rule should not be interpreted to prohibit schools from returning prospective students' calls or emails, DPL should interpret "unsolicited" to ensure that a student who expresses

² See *supra* note 1.

³ 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 PERNA, 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>. Multiple investigations suggest that such statistics dramatically underreport defaults on federal loans. 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/20100921aggressivedefaultmanagement.pdf>.

⁴ See, e.g., Andrew Martin, *Debt Collectors Cashing in on Student Loan Roundup*, N.Y. TIMES, Sept. 8, 2012, at A1.

⁵ "Abusive Practices. Practices that: . . . include repeated, unsolicited contact with an individual exceeding two such contacts by or on behalf of a school in a one month period." 230 MASS. CODE REGS. 12.00(d).

⁶ For example, 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. U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-10-948T, *FOR-PROFIT COLLEGES: UNDERCOVER TESTING FINDS COLLEGES ENCOURAGED FRAUD AND ENGAGED IN DECEPTIVE AND QUESTIONABLE MARKETING PRACTICES* 15 (2010).

interest with a call, an email, a web form, or any other method is not subject to unlimited recruitment by the school. We urge DPL to ensure this rule protects even those students who have expressed interest in a school. Such an interpretation would align DPL’s proposed regulations with the regulations recently proposed by the Attorney General, which limit for-profit schools to two phone-based contacts per seven-day period when a prospective student has expressed interest in a school, and two “other” (presumably email) contacts per thirty-day period.⁷

Interpreting “unsolicited contact” to include situations where a prospective student has expressed interest in a school would also preserve the logic and intent of DPL’s requirement that each school maintain a “Do Not Contact List,” inform students of its existence, and refrain from unsolicited contact with prospective students who have so requested.⁸ We support the requirement that schools maintain these lists, and encourage DPL to specify that all branches, campuses, or sites of a school should maintain and share a single list, regardless of whether they share a license.⁹ The proposed regulation applies to “a school,” which is defined by reference to a statutory definition of “Private Occupational School,”¹⁰ which in turn specifies “a private educational organization” providing vocational or occupational training.¹¹ Because these definitions do not clarify the treatment of related campuses or branches, the regulation should state explicitly that campuses, branches, and sites will be treated as a single school for the purpose of the “Do Not Contact List” provision.

Enrollment, Withdrawal, and Refunds

Despite DPL’s proposals aimed at curbing abusive recruiting practices, there will doubtless continue to be instances in which schools accept students who should not have been enrolled. The proposed regulations help limit the chance that such an error would cause the long-term financial devastation that too many of our clients have experienced. Specifically, the proposed regulations protect against common problems our clients experience as part of the enrollment process by: using a “cooling off period” to limit the effectiveness of high-pressure sales techniques; allowing all students an opportunity to withdraw without significant cost if it is apparent at the outset that the program does not meet their expectations; limiting students’ obligations when they are forced to withdraw because they do not qualify for the financial aid the school led them to expect; and protecting students’ statutory right to a refund when they withdraw informally.

⁷ 940 MASS. CODE REGS. 31.06(9). (“**Prohibited Practices. . . Engaging in High-Pressure Sales Tactics.** When a prospective student has provided an indication of interest in the school, it is an unfair or deceptive act or practice for a school to initiate communication a prospective student via telephone (either voice or data technology), in person, via text messaging, or by recorded audio message, in excess of two such communications in each seven-day period to either the prospective student’s residence, cellular telephone, or other telephone number provided by the student as his/her personal telephone number, and two such communications in each 30-day period other than to a student’s residence, cellular telephone, or other telephone number provided by the student as his/her personal telephone number.”)

⁸ See 230 MASS. CODE REGS. 15.06(14).

⁹ For example, it appears from DPL’s website that the Boston Bartenders School of America operates at six locations under four different licenses, all sharing a single website; Lincoln Technical Institute operates three locations under three different licenses; and Porter & Chester Institute operates four locations under four different licenses. See DPL Office of Private Occupational School Education, *Licensed Private Occupational Schools and Approved Branch Locations*, <http://license.reg.state.ma.us/public/schools/licensure/listings.html> (last visited March 19, 2014).

¹⁰ 230 MASS. CODE REGS. 12.00.

¹¹ MASS. GEN. LAWS ch. 112, § 263(a).

The proposed “cooling off period” prohibits schools from accepting a signed enrollment contract from a prospective student within seventy-two hours of providing the contract to the student.¹² Cooling off periods restructure transactions that tend to be high-pressure in order to allow consumers some opportunity to examine disclosures, evaluate second thoughts, and make an informed and calm decision. Empirical research suggests that waiting periods, which require a delay before a transaction may be consummated, may be more effective in achieving these goals than rules that create, extend, or amplify a right of rescission.¹³ The proposed regulation creates a waiting period, allowing prospective students three full days to consider their enrollment decision before the school may accept a signed enrollment agreement. We support this requirement because it permits students to make serious educational and financial commitments away from the immediate influence of sales representatives.¹⁴

Consumers will be further protected from the dire consequences of poorly informed decisions by the provision allowing students to withdraw within ten days after commencement of a program and receive a full refund.¹⁵ Many of our clients realized very quickly upon beginning to attend that a program was beyond their capacity or not what they were expecting. This provision permits them to withdraw upon that realization without incurring significant financial obligations. DPL could strengthen this provision by requiring schools to remind students of this opportunity within the ten-day period.

Third, the proposed regulations protects students in the too-common case that 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 occupational schools have enrolled and begun classes the same day. Most did not receive responses to their loan applications before they began, and schools often notified students of problems with their loan approval several weeks into the program, by which time students’ right to a refund was diminished. Although the students’ enrollment in and attendance at the schools were predicated on the schools’ promises to help them obtain financial aid, eventual denial of the loans did not eradicate the students’ financial obligations to the schools. Therefore, we strongly support the provision requiring schools to offer, in writing, the opportunity to withdraw and receive a full refund when students begin a program and are later denied some or all of the financial aid for which they had applied.¹⁶

Finally, the proposed regulations help to ensure that the many students who do not complete programs have a realistic opportunity to obtain the tuition refunds that Massachusetts law has long intended to provide.¹⁷ Every iteration of the Massachusetts statute requiring private occupational

¹² 230 MASS. CODE REGS. 15.04(1).

¹³ JOHN A. SPANOGLE ET AL., CONSUMER LAW 309-10 (4th ed. 2013).

¹⁴ Interpreting this regulation to permit schools to accept signed enrollment agreements up front and simply requiring them to wait 72 hours for a student to “cancel” runs counter to the language and purpose of this provision, and essentially duplicates the ten day right to withdraw students are given by 230 MASS. CODE REGS. 15.04(4).

¹⁵ 230 MASS. CODE REGS. 15.04(4).

¹⁶ 230 MASS. CODE REGS. 15.04(7). Similar provisions are in place in other states. *See, e.g.*, 8 COLO. CODE REGS. § 1504-1:VII:S (2011) (prohibiting 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”).

¹⁷ 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

schools to include a contractual right to a *pro rata* refund has set the baseline condition that schools to provide such a refund to students who make a written request.¹⁸ Existing regulations simply require compliance with the statute.¹⁹

In spite of this long-established, unequivocal entitlement to a refund, many students are still burdened by significant student loan debt despite having left school very soon after enrolling. In our clients' experiences, this is due in large part to schools adopting the statutory baseline by requiring students to submit a written withdrawal to obtain a refund. 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 burden them with tens of thousands of dollars of non-dischargeable debt.

We therefore strongly support the proposed regulation obligating schools to provide refunds calculated based on a student's last date of attendance to students who withdraw in a way not covered by the school's formal withdrawal policy.²⁰ This rule better aligns students' rights with the rights of the federal government, to which schools must remit federal student aid funds in an amount based on the student's last date of attendance, regardless of the formality of the student's withdrawal.²¹ We are hopeful that the proposed provision, along with vigilant enforcement, will help to prevent former students from carrying enormous debt burdens for programs from which they withdrew, while also preventing schools from claiming thousands of dollars to which they are not entitled on the basis of a technicality.

Enforcement

The proposed regulations take necessary and important steps to protect consumers, but will produce little change without vigilant enforcement. Therefore, we request that DPL increase its monitoring and enforcement activity, and clarify its regulations on the role of private enforcement.

Since it became responsible for enforcing regulation of occupational schools in August 2012, DPL has taken disciplinary action against one school, and eight schools regulated by DPL have closed.²² It fined the for-profit New England Casino Dealer Academy \$1,500 for: its alleged false advertising of inflated wages upon inspection in March 2012 and again upon a follow-up

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. Act Regulating the Termination of Certain Personal Service Contracts Whereby the Persons Purchasing Services Actively Participate in the Acquisition of the Benefits to Be Derived, 1974 Mass. Acts ch. 460 (codified at MASS. GEN. LAWS ch. 255, § 13K (2012)).

¹⁸ 1974 Mass. Acts ch. 460; 1978 Mass. Acts ch. 533; 1982 Mass. Acts ch. 159; 2012 Mass. Acts ch. 106.

¹⁹ 603 MASS. CODE REGS. 3.13(2) (“For-profit schools shall use a refund policy that conforms to the requirements of M.G.L. c. 255, §13K.”).

²⁰ 230 MASS. CODE REGS. 15.04(6).

²¹ See 34 C.F.R. § 668.22(b).

²² See DPL Office of Private Occupational School Education, *Disciplinary Actions Taken by DPL*, <http://www.mass.gov/ocabr/press-releases/2013/dpl-fines-new-england-casino-dealer-academy.html> (last visited March 19, 2014); DPL Office of Private Occupational School Education, *DPL Closed School Bulletins*, <http://license.reg.state.ma.us/public/schools/closed/bulletin/default.html> (last visited March 19, 2014).

inspection in June; incomplete student enrollment agreements in March and again in June; and failure to obtain the required DPL approval for a change in ownership.²³ Classes at the school cost between \$800 and \$1,200.²⁴

Before DPL was tasked with enforcement, the Department of Elementary and Secondary Education bore that responsibility. Between 2004 and 2012, it imposed forty-four suspensions of schools' licenses: nine related to expired or invalid sureties; five related to submission of financial statements to the state auditor; eighteen related to building inspections; twenty-four related to fire inspections; two related to failure to inform the Department of a change in location; and one related to the failure to submit a timely and sufficient application for renewal. No suspensions were imposed related to advertising, the content of enrollment contracts, or any other requirement related to programming or other actions outside of the licensing process.²⁵ The nine license revocations followed the same distribution of reasons.²⁶

We encourage DPL to embrace its statutory power to enforce its regulations, especially regulations concerning advertising²⁷ and recruitment of students and concerning students' opportunities to withdraw and obtain refunds. Vigorous enforcement by DPL will help make whole consumers who have been treated unfairly by schools, and will signal to all regulated schools that the requirements and prohibitions imposed by these proposed regulations are to be taken seriously.

DPL is further obliged to take an active role in policing these practices because of the existing barriers to effective private enforcement. First, many schools' enrollment agreements contain sweeping arbitration agreements, which present an obstacle for students seeking to enforce these laws and regulations in court.²⁸ 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

²³ See; *New England Casino Dealer Academy Fined for Improper Advertising and Record-Keeping Practices*, Nov. 12, 2013 <http://license.reg.state.ma.us/public/schools/licensure/da-dpl.html>.

²⁴ *New England Casino Dealer Academy, 2014 Class Schedule*, <http://www.necasinodealer.com/schedules.html> (last visited March 19, 2014).

²⁵ See DPL Office of Private Occupational School Education, *Disciplinary Actions Imposed by DESE: License Suspensions*, <http://license.reg.state.ma.us/public/schools/licensure/da-dese-suspensions.html> (last visited March 19, 2014).

²⁶ See DPL Office of Private Occupational School Education, *Disciplinary Actions Imposed by DESE: License Revocations*, <http://license.reg.state.ma.us/public/schools/licensure/da-dese-revocations.html> (last visited March 19, 2014).

²⁷ We support the additional limitations on advertisements. See 230 MASS. CODE REGS. 15.06. We suggest that DPL revise its proposed regulation regarding advertisement of salary to mirror the restriction on advertisements of employment guarantees—any advertisement that states or implies wages or salaries of program graduates should disclose the source and basis for those amounts **in the advertisement**, in normal-sized, easy-to-understand text.

²⁸ 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.”

relief from the effects of unfair practices.²⁹ 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.” In light of these barriers, DPL should fulfill its responsibility as the primary and often sole enforcer of these regulations.

We further request that DPL clarify that it does not intend the proposed regulations to further limit the already-narrow relief for students who have been wronged by schools that violate the regulations. The sections on disclosures and advertisements both contain provisions stating that those sections are “not intended to confer any private right or (sic) action not otherwise provided by statute.”³⁰ The 2012 Act specifically provides a private right of action for students misled by false or deceptive representations by a school: “Any 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, plus court costs and reasonable attorney’s fees.”³¹ Moreover, regulations promulgated pursuant to the Massachusetts Consumer Protection Act make clear that an act or practice that “fails to comply with existing statutes, rules, regulations or laws, meant for the protection of the public’s health, safety, or welfare promulgated by the Commonwealth . . . intended to provide the consumers of this Commonwealth protection” violates the Consumer Protection Act.³² Thus, even if an instance of a school’s non-compliance with the disclosure or advertising regulations did not meet the two prongs of the statutory right of action—the student was misled and the representation was misleading—it would nonetheless constitute a failure to comply with a regulation intended to protect consumers, and therefore be actionable under the Consumer Protection Act so long as the student has suffered an injury.³³

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.

²⁹ See *An Act to Form a Commission on For-Profit Schools: Hearing on H. 1066/S. 134 Before Mass. Joint Comm. on Higher Educ.*, June 8, 2011 (Written Testimony of Deanne Loonin, Director, National Consumer Law Center’s Student Loan Borrower Assistance Project).

³⁰ 230 MASS. CODE REGS. 15.05(6), 15.06(19).

³¹ MASS. GEN. LAWS ch. 112, § 263(n).

³² 940 MASS. CODE REGS. 3.16(3).

³³ See MASS. GEN. LAWS ch. 93A, §9(1) (“Any person . . . who has been injured by another person’s use or employment of any method, act or practice declared to be unlawful by section two or any rule or regulation issued thereunder . . . may bring an action”).