

New York City Department of Consumer Affairs

Notice of Public Hearing and Opportunity to Comment on Proposed Rules

What are we proposing? The Department of Consumer Affairs (“DCA” or “Department”) is proposing new rules to prohibit deceptive trade practices by for-profit schools that are not licensed by the New York State Education Department or accredited by the New York State Board of Regents. These proposed rules would also amend the penalty schedule for consumer protection law violations to include violations of these new proposed rules.

When and where is the hearing? DCA will hold a public hearing on the proposed rules. The public hearing will take place at 10:00 AM on Thursday, April 4, 2019. The hearing will be in the DCA hearing room at 42 Broadway, 5th Floor, New York, NY 10004.

How do I comment on the proposed rules? Anyone can comment on the proposed rules by:

- **Website.** You can submit comments to DCA through the NYC rules website at <http://rules.cityofnewyork.us>.
- **Email.** You can email comments to Rulecomments@dca.nyc.gov.
- **Mail.** You can mail comments to Casey Adams, Director of City Legislative Affairs, New York City Department of Consumer Affairs, 42 Broadway, 8th Floor, New York, NY 10004.
- **Fax.** You can fax written comments to the Department of Consumer Affairs, (646) 500-5962.
- **By speaking at the hearing.** Anyone who wants to comment on the proposed rules at the public hearing must sign up to speak. You can sign up before the hearing by calling (212) 436-0095. You can also sign up in the hearing room before the hearing begins at 10:00 AM on Thursday, April 4, 2019. You can speak for up to three minutes.

Is there a deadline to submit comments? Yes. You must submit any comments to the proposed rules on or before 5:00 PM on Thursday, April 4, 2019.

What if I need assistance to participate in the hearing? You must tell DCA’s External Affairs Division if you need a reasonable accommodation of a disability at the hearing. You must tell us if you need a sign language interpreter. You can tell us by mail at the address given above. You may also tell us by telephone at (212) 436-0095. Advance notice is requested to allow sufficient time to arrange the accommodation. Please tell us by 5:00 PM on Monday, April 1, 2019.

This location has the following accessibility option(s) available: wheelchair accessible.

Can I review the comments made on the proposed rules? You can review the comments made online on the proposed rules by going to the website at <http://rules.cityofnewyork.us/>. A few days after the hearing, all comments received by DCA on the proposed rules will be made available to the public online at <http://www1.nyc.gov/site/dca/about/public-hearings-comments.page>.

What authorizes DCA to make these rules? Sections 1043, 2203(f) and 2203(h)(1) of the New York City Charter (“City Charter”) and Section 20-702 of the Administrative Code of the City of New York authorize DCA to make these proposed rules. These proposed rules were not included in the Department’s regulatory agenda for this Fiscal Year because they were not contemplated when the Department published the agenda.

Where can I find DCA’s rules? The Department’s rules are in Title 6 of the Rules of the City of New York.

What laws govern the rulemaking process? DCA must meet the requirements of Section 1043 of the City Charter when creating or changing rules. This notice is made according to the requirements of Section 1043 of the City Charter.

Statement of Basis and Purpose of Proposed Rules

The Department of Consumer Affairs (“DCA” or “Department”) is proposing new rules to address problems experienced by consumers when they seek to enroll, or are already enrolled, in for-profit schools that are not licensed by the New York State Education Department or accredited by the New York State Board of Regents. These schools intensively market degree programs to consumers and are supported almost entirely by state and federal loans.

Section 2203 of Chapter 64 of the New York City Charter (“Charter”) delegates to the Commissioner of the Department broad authority to enforce laws relating “to the advertising and offering for sale and the sale of all commodities, goods, wares and services” and to investigate and bring actions against businesses for engaging in deceptive or unconscionable trade practices. New York City Administrative Code (“NYC Code”) § 20-700 *et seq.* and 6 RCNY § 5-01 *et seq.* (hereinafter the “Consumer Protection Law” or “CPL”) prohibit “any deceptive or unconscionable trade practice in the sale . . . of any consumer goods or services[,]” and define deceptive trade practices to include “any false . . . or misleading oral or written statement . . . which has the capacity, tendency or effect of deceiving or misleading consumers.” Charter §§ 1043, 2203(f) and 2203(h)(1) authorize the Department to promulgate rules, generally, and NYC Code § 20-702 authorizes the Department to adopt “such rules and regulations as may be necessary to effectuate the purposes of this subchapter, including regulations defining specific deceptive or unconscionable trade practices.”

Currently, under New York State law, for-profit career schools must be licensed by the New York State Education Department. See NY Educ. Law § 5001. These licensed schools are subject to requirements contained in state law and regulation. See NY Educ. Law § 5001 *et seq.*; 8 N.Y.C.R.R. § 126.1 *et seq.* Separately, some for-profit schools that are exempt from the licensing requirements of New York Education Law because they are authorized by the New York State Board of Regents (“BOR”) to confer degrees may voluntarily seek accreditation by the BOR and be subject to accompanying regulations. See 8 NYCRR § 4-1.1 *et seq.* However, a subset of for-profit schools that are exempt from the licensing requirements of New York Education Law seek accreditation from a body other than the BOR. These for-profit schools operate in New York City and are subject to no direct oversight or regulation by the government.

The Department has found, through review of consumer complaints, the Department’s research and investigations, and review of the research and reporting of higher education scholars, regulators and other interested parties, that some unregulated for-profit schools engage in a pattern of deceit when dealing with potential students. Unregulated for-profit schools can mislead consumers about the availability and impact of certain types of financial aid; the transferability of credits to and from the for-profit school; and the actual cost of attendance, among other things. In pursuing potential students, these schools have engaged in behavior so aggressive that some consumers have perceived it as harassment. Once enrolled in these schools, students can be deceived about the cost of continued attendance and are often subjected to behavior by the school designed to extend the period of enrollment to maximize the tuition received by the school. Many students leave these schools without diplomas and graduation rates are very low. They are, however, saddled with outsized debt that they can ill afford, and sometimes pursued relentlessly by debt collectors.

The Department seeks to promulgate rules to ensure that these unregulated for-profit schools operate fairly and honestly, and utilize business practices that are not deceptive.

Specifically, the Department is proposing new rules that would, among other things:

- Prohibit false or misleading statements and representations to prospective and enrolled students;
- Prohibit certain deceptive trade practices; and
- Require certain material disclosures.

These proposed rules would also amend the penalty schedule for consumer protection law violations to include violations of these new proposed rules.

New material is underlined.

[Deleted material is in brackets.]

“Shall” and “must” denote mandatory requirements and may be used interchangeably in the rules of this department, unless otherwise specified or unless the context clearly indicates otherwise.

Proposed Rule Amendments

Section 1: Part 5 of Subchapter A of Chapter 5 of Title 6 of the Rules of the City of New York is amended by adding a new section 5-52 to read as follows:

§ 5-52 [[Reserved]]For-Profit Schools.

(a) Definitions.

Employment in the Field of Study. “Employment in the field of study” means employment in the job specified in the name of the program or in the certificate, diploma, or degree conferred by a school upon graduation from the program, or the reasonable equivalent thereof. The “reasonable equivalent” does not include a job for which: (1) training in the program is not required; and (2) the entry level salary is less than 80% of the entry level salary of the job specified in the name of the program.

Employment opportunity. “Employment opportunity” means any employment sought or obtained by graduates of a school.

Enrollment Agreement. “Enrollment agreement” means a contract or agreement under which a consumer agrees to pay tuition or fees to a for-profit school or to obtain a loan or grant to pay tuition or fees to a for-profit school.

False Representation. “False representation” means any false, untrue, unsubstantiated, or deceptive representation or any representation which has the tendency or capacity to mislead or deceive students, prospective students, or any other person.

For-profit institution. “For-profit institution” means any corporation, partnership, firm, organization, or other business entity that is organized as a for-profit school, and any institution formally organized as a not-for-profit institution if one or more members of the governing board of the not-for-profit institution (other than ex officio members serving at the pleasure of the remainder of the governing board and receiving a fixed salary), or any person with the power to appoint or remove members of such governing board, receives any substantial direct or indirect economic benefit (including a lease, promissory note, or other contract) from the not-for-profit institution.

For-profit school. “For-profit school” means a for-profit institution that charges tuition or fees related to instruction and qualifies as exempted from the licensing requirement of section 5001 of the Education Law pursuant to paragraph (a) of subdivision 2 of such section. A for-profit school does not include: (1) a school that waives such exemption and is licensed pursuant to subdivision (2-a) of section 5001 of the Education Law; or (2) a school that is accredited pursuant to section 4-1.3 of part 4 of chapter 1 of title 8 of the New York Codes, Rules, and Regulations.

Graduate Placement Rate. “Graduate placement rate” means the number of students obtaining full time (at least 32 hours per week), non-temporary employment in the field of study during the latest two calendar years for which the school has obtained verification, divided by the number of all students graduating from the program during the latest two calendar years. The graduate placement rate shall be determined within 180 days from the end of each calendar year.

Graduation Rate. “Graduation rate” means the number of students who received certificates, diplomas, or degrees in the program during the latest two calendar years, divided by the number of students who enrolled in the program during the latest two calendar years. The graduation rate shall be determined within 180 days from the end of each calendar year.

Median cumulative debt amount. “Median cumulative debt amount” means the median amount of cumulative debt, including private, institutional, and federal, incurred by students who completed a program.

Misleading limited time offer. “Misleading limited time offer” means any representation that an offer is limited in time when the limitation is not true, or a representation that enrollment in a particular program is only open or available for a particular period of time or until a date certain when enrollment in the program actually occurs on a rolling, ongoing, or regular basis (including monthly and seasonally).

Misleading money back guarantee. “Misleading money back guarantee” means any representation that a student may receive money back, a refund, or any other similar offer, without clearly and conspicuously stating any limitations, conditions, or other requirements which must be met to receive the refund.

Placement. “Placement” means a student’s employment opportunities, career, or occupation after leaving a for-profit school, or the employment opportunities, career, or occupation a school program qualifies or prepares students to enter or obtain.

Placement Services. “Placement services” means services or assistance provided by a for-profit school in connection with the securing or attempting to secure employment opportunities for students.

Program. “Program” means a course of study for which a for-profit school confers a certificate, diploma, or degree.

Program Cost. “Program cost” means the tuition and fees charged for completing a program, including the typical costs for books and supplies (unless those costs are included as part of tuition and fees), the cost of room and board (whether on or off campus), and transportation.

Representation. “Representation” means any statement made orally or in writing, whether directly or indirectly, in any medium, including, but not limited to, printed or electronic forms. Representations include, but are not limited to, advertisements, promotional materials, and statements made by sales or recruitment personnel or other employees or agents of the school.

Total Placement Rate. “Total placement rate” means the product of the graduate placement rate and the graduation rate. The total placement rate shall be determined within 180 days from the end of each calendar year.

(b) Prohibited False or Misleading Representations. It is a deceptive trade practice for a for-profit institution:

(1) to make or publish, or cause or permit to be made or published, any false representation concerning the school, including, but not limited to, the school’s enrollment activities, the character, nature, quality, value, or scope of any course or program offered, the school’s influence in obtaining employment opportunities for its students, graduation rates, graduation time, program cost, loan amount, median cumulative debt amount, repayment amount, or the transferability of credits.

(2) to make any false representation regarding actual or probable earnings in any employment opportunity of the school’s graduates.

(3) to make any representation which states or implies that persons employed in a particular position will earn a stated salary or income or that persons completing some program will earn the stated salary or income or "up to" the stated salary or income, including by using the words "Earn \$" or "Earn up to \$", unless:

(i) the salary or income is equal to or less than the entry level salary of persons employed in the occupation in the State of New York; and

(ii) the representation states clearly and conspicuously any limitations, conditions, or other requirements such as union membership, service of an apprenticeship, or obtainment of an occupational license, which must be met before the stated salary or income can be earned; and

(iii) the representation states clearly and conspicuously that no guarantee is made that a person who purchases the advertised services will obtain employment opportunities or will earn the stated salary or income, unless the guarantee is actually offered by the school.

(4) to make any false representation regarding placement, graduate placement rates, total placement rates, or placement services.

(5) to make any false representation regarding:

(i) any employment opportunity;

(ii) the necessity, requirement, or utility of any program in obtaining professional licensure, employment in the field of study, admission to a labor union or similar organization;

(iii) the necessity of, or qualification(s) for, certification or licensure in any employment opportunity, including but not limited to: (A) any cost to obtain or maintain the certification or licensure, if the cost is not included in the for-profit school's tuition or fees; and (B) any continuing education requirement to obtain or maintain the certification or licensure; and

(iv) any opportunity to qualify for membership in a society or association or union, or to obtain a license, or any opportunity to enroll in a future program or field of study, as a result of the completion of its program, without further education, study, externship, internship, or clinical experience.

(6) to make any representation that the school or a program has been:

(i) approved by any government agency without clearly and conspicuously indicating the scope, nature, and terms of that approval, unless true; or

(ii) accredited by an accrediting body, unless true.

(7) to misrepresent the amount of time it takes to finish a program, including by misrepresenting the median or average completion time to obtain a certificate, diploma, or degree.

(8) to make a misleading limited time offer.

(9) to make a misleading money back guarantee.

(10) to represent any component or service related to a program as "free" when in fact the component or service is regularly included as part of the program for which tuition is required.

(11) to represent that faculty members have particular teaching, instructional, or professional qualifications, certifications, or degrees, when they do not.

(12) to make a false representation concerning the nature or character of classroom instruction provided by the school, including, but not limited to, representing that classroom instruction is in-person if instruction is in fact provided by non in-person methods, including video or computer terminals, and/or through self-guided study.

(13) to represent that a program is approved or licensed when it is not.

(14) to represent that a program teaches a subject, skill, or materials that are not actually part of the curriculum of a program.

(15) to represent that its credits are transferable to another educational institution when they are not.

(16) to fail to disclose the actual cost of the examination or test prior to the time of enrollment, if a for-profit school offers or requires students to take an examination, certification examination, or similar test of the students' competence to enter, continue with, or graduate from a program, or to be certified in a particular occupational field, and the examination or test is available directly from an outside vendor.

(17) to conceal or fail to disclose any fact relating to the school or program, the omission of which is material to the student's decision to enroll in, or continue to attend, the school.

(c) Prohibited Practices. It is a deceptive trade practice for a for-profit institution:

(1) to misrepresent or falsify a student's attendance or academic progress or record in order to permit a student to continue to receive financial aid or to graduate from a program or for any other reason.

(2) to obtain personal information, including names, home or electronic addresses, telephone numbers, or other contact information from lead generators or website operators that do not clearly and conspicuously disclose to consumers that their personal information will be provided to schools.

(3) to promise an internship or externship (collectively "internship"), or include an internship as a required element of a program, unless the school ensures that all such internships prepare the student for employment in the field of study, and provides school-based personnel to assist in locating and arranging such internships.

(4) to enroll or induce retention of a student in any program when the school knows, or should know, that due to the student's educational level, training, experience, lack of language proficiency, or other material disqualification, the student will not or is unlikely to:

(i) graduate from the program; or

(ii) meet the requirements for employment in the field of study. If a student has a disability, the determination that the student is disqualified shall be made based on the student's ability to graduate from the program or meet the requirements for employment in the field of study with the provision of a reasonable accommodation for that disability.

(5) to enroll a student without taking reasonable steps to communicate the material facts concerning the school or program in a language that is understood by the prospective student. Reasonable steps a school might take to comply with this regulation include but are not limited to:

(i) using adult interpreters; and

(ii) providing the student with a translated copy of the enrollment materials and disclosures required by these regulations or by any other applicable state or federal law, regulation, or directive in a language understood by the student.

(6) to initiate communication with a prospective student, prior to enrollment, 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 the prospective student's residence, business or work telephone, cellular telephone, or other telephone number provided by such student.

(7) to refer to salespersons or recruiters as "counselors" or "advisors" or imply that a salesperson or recruiter is an academic advisor or counselor, when:

(i) the primary role of such person is to market the school's programs or enroll students in the school; or

(ii) such person is evaluated or compensated in any part based on her ability to recruit students.

(d) Required Disclosures. The disclosures required by this subdivision must be signed or initialed by the consumer or prospective student and a signed copy must be retained by the for-profit institution for five years. It is a deceptive trade practice for a for-profit institution to fail to make the following disclosures to consumers and prospective students, clearly and conspicuously, at least 72 hours prior to entering into an enrollment agreement with a consumer or prospective student:

(1) the total program cost;

(2) the graduation rate;

(3) the graduate placement rate;

(4) the total placement rate;

(5) the median time in which students complete the program; and

(6) the median cumulative debt amount.

§ 2. Section 6-47 of Subchapter B of Chapter 6 of Title 6 of the Rules of the City of New York is amended to read as follows:

§ 6-47 Consumer Protection Law Penalty Schedule.

All citations are to Title 20 of the Administrative Code of the City of New York or Title 6 of the Rules of the City of New York.

Unless otherwise specified, the penalties set forth for each section of law or rule shall also apply to all subdivisions, paragraphs, subparagraphs, clauses, items, or any other provision contained therein. Each subdivision, paragraph, subparagraph, clause, item, or other provision charged in the Notice of Violation shall constitute a separate violation of the law or rule.

For the fine amounts marked by a single asterisk, if the respondent timely submits the appropriate proof of having cured a first-time violation, the respondent will not be subject to a civil penalty pursuant to Local Law 153 of 2013.

Unless otherwise specified by law, a second or third or subsequent violation means a violation by the same respondent, whether by pleading guilty, being found guilty in a decision, or entering into a settlement agreement for violating the same provision of law or rule, within two years of the prior violation(s).

Citation	Violation Description	First Violation	First Default	Second Violation	Second Default	Third and Subsequent Violation	Third and Subsequent Default
Admin Code § 20-700	Engaged in an unlawful deceptive or unconscionable trade practice	\$260	\$350	\$315	\$350	\$350	\$350
6 RCNY § 5-23	Failure to meet the requirement(s) for layaway plans	\$260	\$350	\$315	\$350	\$350	\$350
6 RCNY § 5-24	Failure to meet requirement(s) for credit card limitations	\$260*	\$350*	\$315	\$350	\$350	\$350
6 RCNY § 5-32	Failure to meet the requirement(s) for documentation of transactions	\$260	\$350	\$315	\$350	\$350	\$350
6 RCNY § 5-36	Failure to meet the requirement(s) for sale of used items	\$260	\$350	\$315	\$350	\$350	\$350
6 RCNY § 5-37	Failure to comply with disclosure of refund policy requirements	\$260*	\$350*	\$315	\$350	\$350	\$350
6 RCNY § 5-39	Failure to meet the requirements for cancellation of home appointment	\$260	\$350	\$315	\$350	\$350	\$350
6 RCNY § 5-40	Improper limit or disclaimer of liability for negligence	\$260	\$350	\$315	\$350	\$350	\$350
6 RCNY § 5-40(e)	Improper posting of sign that business is not liable for negligence	\$260*	\$350*	\$315	\$350	\$350	\$350
6 RCNY § 5-41	Collected sales tax on sale of good or service not subject to such tax under Article 28 of the NYS Tax Law or rule and regulations promulgated thereunder	\$260	\$350	\$315	\$350	\$350	\$350
6 RCNY § 5-46	Failure to meet the requirement(s) for a car rental business	\$260	\$350	\$315	\$350	\$350	\$350
6 RCNY § 5-46(d)	Failure to post notice of consumer protection law	\$260*	\$350*	\$315	\$350	\$350	\$350
6 RCNY § 5-47	Failure to meet the requirement(s) for jewelry sellers and appraisers	\$260	\$350	\$315	\$350	\$350	\$350
6 RCNY § 5-51	Failure to meet the requirement(s) for retail sale of gasoline	\$260	\$350	\$315	\$350	\$350	\$350
6 RCNY § 5-52	Failure to meet the requirement(s) for for-profit institutions	\$260	\$350	\$315	\$350	\$350	\$350
6 RCNY § 5-54	Failure to meet the requirement(s) for repairs of consumer goods	\$260	\$350	\$315	\$350	\$350	\$350
6 RCNY § 5-55	Failure to meet the requirement(s) for meat and poultry advertising	\$260	\$350	\$315	\$350	\$350	\$350
6 RCNY § 5-56	Failure to meet the requirement(s) for window gates	\$260	\$350	\$315	\$350	\$350	\$350
6 RCNY § 5-57	Failure to meet the requirement(s) for utility bill payments	\$260	\$350	\$315	\$350	\$350	\$350
6 RCNY § 5-58	Improper offer of sale of food in damaged containers	\$260	\$350	\$315	\$350	\$350	\$350
6 RCNY § 5-59	Improper imposition of restaurant surcharges	\$260	\$350	\$315	\$350	\$350	\$350
6 RCNY § 5-60	Failure to meet the requirement(s) for franchises	\$260	\$350	\$315	\$350	\$350	\$350
6 RCNY § 5-61	Failure to meet the requirement(s) for public performance seats	\$260	\$350	\$315	\$350	\$350	\$350
6 RCNY § 5-63	Failure to meet the requirement(s) for catering contracts	\$260	\$350	\$315	\$350	\$350	\$350
6 RCNY § 5-68	Failure to meet the requirements for dealers at flea markets	\$260	\$350	\$315	\$350	\$350	\$350

6 RCNY § 5-69	Failure to meet the requirements of blood pressure reading services	\$260	\$350	\$315	\$350	\$350	\$350
6 RCNY § 5-70	Failure to meet the requirements for retail service establishments	\$260	\$350	\$315	\$350	\$350	\$350
6 RCNY § 5-73	Failure to meet the requirement(s) for the sale of box cutters	\$350	\$350	\$350	\$350	\$350	\$350
6 RCNY § 5-75	Failure to post the Buyer's Guide when selling or offering to sell any used automobile	\$260	\$350	\$315	\$350	\$350	\$350
6 RCNY § 5-87 through 6 RCNY 5-103	Prohibited conduct in offering sales or discounts and related recordkeeping requirements	\$260	\$350	\$315	\$350	\$350	\$350

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1400**

**CERTIFICATION / ANALYSIS
PURSUANT TO CHARTER SECTION 1043(d)**

RULE TITLE: Deceptive Advertising by For-Profit Educational Institutions

REFERENCE NUMBER: DCA-88

RULEMAKING AGENCY: Department of Consumer Affairs

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because violations are for deceptive practices that cannot be cured by additional action.

/s/ Francisco X. Navarro
Mayor's Office of Operations

December 7, 2018
Date

**NEW YORK CITY LAW DEPARTMENT
DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
212-356-4028**

**CERTIFICATION PURSUANT TO
CHARTER §1043(d)**

RULE TITLE: Deceptive Advertising by For-Profit Educational Institutions

REFERENCE NUMBER: 2018 RG 127

RULEMAKING AGENCY: Department of Consumer Affairs

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose;
and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN
Acting Corporation Counsel

Date: December 7, 2018