

<p>DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock Street Denver, Colorado 80202</p> <hr/> <p>MARTHA FULFORD, ADMINISTRATOR, UNIFORM CONSUMER CREDIT CODE,</p> <p>Plaintiff,</p> <p>v.</p> <p>PENNSYLVANIA HIGHER EDUCATION ASSISTANCE AGENCY d/b/a FEDLOAN SERVICING,</p> <p>Defendant.</p>	<p>▲ COURT USE ONLY ▲</p>
<p>PHILIP J. WEISER, Attorney General NIKOLAI N. FRANT, #38716* First Assistant Attorney General PHILIP M. SPARR, #40053* Assistant Attorney General Ralph L. Carr Colorado Judicial Center 1300 Broadway, 6th Floor Denver, Colorado 80203 Phone Number: 720-508-6111 FAX Number: 720-508-6033 Email: nikolai.frant@coag.gov philip.sparr@coag.gov *Counsel of Record</p>	<p>Case No.</p> <p>Courtroom</p>
COMPLAINT	

Plaintiff Martha Fulford, Administrator, Uniform Consumer Credit Code (“the Administrator”), by and through the undersigned counsel, for her complaint, alleges as follows:

I. INTRODUCTION

1. The State of Colorado has a vital and longstanding interest in protecting its citizens, including student loan borrowers. To that end, Colorado’s General Assembly passed the Colorado Student Loan Servicers Act, C.R.S. §§ 5-20-101 to 5-20-119 (“SLSA”), in 2019, finding that: “52 percent of Colorado’s students graduate with student loan debt, with an average balance of \$26,530”; “[t]here are approximately 761,000 student loan borrowers in Colorado”; “the total student loan debt outstanding for Coloradans is approximately \$26 billion”; and “[s]tudent loan debt is a hindrance

to the state's economy, preventing borrowers from achieving financial independence, buying property, starting businesses, and otherwise investing in Colorado's economy[.]” S.B. 19-002, 72nd Gen. Assemb., First Reg. Sess. (Colo. 2019).

2. In passing the SLSA, the General Assembly determined that student loan servicers “serv[e] as a critical link between borrowers and lenders in managing accounts, processing payments, and communicating directly with borrowers”, but “[d]espite this critical relationship . . . there are no consistent, market-wide federal standards for student loan servicing.” S.B. 19-002, 72nd Gen. Assemb., First Reg. Sess. (Colo. 2019).

3. By enacting the SLSA, the General Assembly declared its intention “to promote . . . [m]eaningful access to federal affordable repayment and loan forgiveness benefits . . . [r]eliable information about student loans and loan repayment options . . . [t]he public interest in furtherance of the state’s historic police powers to protect the health, welfare, and safety of the state and, in furtherance of the public interest, the act should be liberally construed to effectuate that intent . . . [and] [q]uality customer service and fair treatment.” S.B. 19-002, 72nd Gen. Assemb., First Reg. Sess. (Colo. 2019).

4. Defendant Pennsylvania Higher Education Assistance Agency d/b/a FedLoan Servicing and American Education Services (AES) (“PHEAA”), is a SLSA licensee as of January 31, 2020 (License No. SLS-3000048) and is one of the nation’s largest student loan servicers.

5. The Administrator, pursuant to her SLSA regulatory powers granted by the General Assembly, has requested sample documents and information regarding PHEAA’s servicing policies and procedures. PHEAA has wrongfully refused to provide Administrator with most of the requested documents and information.

6. The Administrator now seeks a preliminary and permanent injunction, compelling PHEAA to comply with its duties under the SLSA to provide the Administrator with the requested documents and information, so that the Administrator may, consistent with the General Assembly’s intent, fulfill her statutory obligation to provide meaningful oversight of servicers and to protect Colorado borrowers.

II. PARTIES

7. The Administrator is the duly appointed Administrator of the Uniform Consumer Credit Code, C.R.S. § 5-6-103. Pursuant to the SLSA, the Administrator is authorized to conduct examinations and investigations of student loan servicers that are servicing student education loans owned by residents of Colorado. C.R.S. §§ 5-20-110; 5-20-106; 5-20-102. The Administrator may enforce compliance with the SLSA by bringing a civil action to restrain servicers from violating the SLSA and to obtain other appropriate relief. C.R.S. §§ 5-20-116; 5-20-117. In such action, the

Administrator may seek a temporary restraining order or a preliminary injunction, obtain consumer restitution, and collect civil penalties. C.R.S. § 5-20-116; 5-20-117.

8. Defendant PHEAA is national student loan servicer headquartered at 1200 N. Seventh Street, Harrisburg, PA 17102 and is licensed by the Administrator as a student loan servicer.

III. JURISDICTION AND VENUE

9. This Court has jurisdiction over PHEAA. In servicing the private and federal student loans of Colorado borrowers, PHEAA transacts business with Colorado and, therefore, intentionally avails itself of Colorado's markets so as to render the exercise of jurisdiction of Colorado courts over PHEAA consistent with traditional notions of fair play and substantial justice. C.R.S. § 13-1-124.

10. Venue is proper in Denver County because PHEAA's student loan servicing activities include the Denver area and, therefore, PHEAA's liability arises in Denver County. C.R.C.P. 98.

IV. FACTS

11. Pursuant to Title IV of the Higher Education Act, the federal government provides financial assistance to students pursuing higher education. 20 U.S.C. §§ 1070–1099d.

12. The federal government has lent money directly to students, via the Federal Direct Loan Program (FDLP), since 1994. 20 U.S.C. §§ 1087a–1087j. Further, the federal government purchased a large amount of loans originated by private lenders, under the HEA's Federal Family Education Loan Program (FFELP), between Oct. 1, 2003 and July 1, 2010. 20 U.S.C. § 1087i-1. Unlike most private student loans, FDLP and FFELP provide certain borrower protections, including income-based repayment plans, forbearance options, and loan forgiveness programs.

13. Unfortunately, FDLP and FFELP loan servicing is plagued by a lack of consistent federal standards and the U.S. Department of Education's ("ED") failure to hold poor performing servicers accountable, as permitted by its servicer contracts.

14. A 2015 Consumer Financial Protection Bureau ("CFPB") report found that there are no consistent, market-wide federal standards for student loan servicing. Similarly, a 2019 Inspector General audit of Federal Student Aid ("FSA")¹ found the following: FSA had not established policies and procedures that provided reasonable assurance that the risk of servicer noncompliance with requirements for servicing federally held student loans was mitigated; from January 1, 2015 through September 30, 2017, 61 percent of the reports on FSA's oversight activities disclosed instances of

¹ FSA is part of ED and is the largest provider of student financial aid in the nation.

servicer noncompliance; and FSA management rarely used available contract accountability provisions to hold servicers accountable for instances of noncompliance, thereby failing to provide servicers with an incentive to take actions to mitigate the risk of continued servicer noncompliance, which harms borrowers.

15. In 2007, Congress created the Public Service Loan Forgiveness (“PSLF”) program, which encourages individuals to work in public service by offering federal student loan forgiveness. 34 C.F.R. § 685.219. FDLP loans—and FFELP loans consolidated into FDLP loans—are eligible for PSLF.

16. Under the PSLF program, the remaining student loan balance of a borrower who enters public service is forgiven after the borrower makes 120 qualifying payments, so long as the borrower was employed in a public service job when the payments were made and at the time of forgiveness. 20 U.S.C. § 1087e(m). PSLF enables graduates to take relatively low-paying jobs in government and at nonprofits serving veterans, the elderly, low-income children, people with disabilities, victims of domestic violence, and other vulnerable groups. Many teachers, nurses, social workers, firefighters, and members of the armed forces are eligible for PSLF.

17. ED is empowered to enter into contracts for the servicing and collection of FDLP and FFELP loans, including the PSLF program. 20 U.S.C. §§ 1087f and 1087-i.

18. ED granted PHEAA the exclusive contract to service and administer the PSLF program and, because PHEAA is the exclusive servicer of PSLF, borrowers have no choice but to rely on PHEAA to administer PSLF fairly and correctly.

19. The CFPB’s 2015 report found that improper processing of consolidation paperwork by servicers can result in the selection of a repayment plan that may not qualify for PSLF when a borrower would otherwise qualify and borrowers felt the negative financial impact of relying on incorrect information, since every monthly payment made under an arrangement that didn’t qualify for PSLF resulted in delayed loan forgiveness, requiring additional payments by the borrower.

20. A September 2018 report from the U.S. Government Accountability Office (“GAO”) found that of the 19,321 borrowers who submitted a PSLF application, only 55 were granted forgiveness, a success rate of .02%. The same GAO report also noted a pattern of noncompliance at PHEAA with regard to PHEAA’s failure to provide sufficient information regarding available repayment options and, in calls monitored by FSA between PHEAA and borrowers, PHEAA’s failed-call rate was significantly higher (10.6%) than the average failed-call rate for all federal loan servicers (4.3%).

21. PHEAA is also regularly at or near the bottom of satisfaction surveys that FSA conducts of borrowers and FSA employees who have interacted with each of the nine federal loan servicers. For FSA surveys from 2016 to 2019, PHEAA was rated: the worst servicer six out of ten times by FSA employees; the second to worst servicer

three out of ten times by FSA employees; and one of the bottom two or three servicers by borrowers ten out of ten times.

22. Pursuant to the SLSA, federal loan servicers like PHEAA are granted an automatic license from the Administrator upon payment of specified license and renewal fees. The automatic license cannot be suspended or revoked by the Administrator. *See C.R.S. § 5-20-106(1)(c).*

23. After the enactment of the SLSA, the Administrator issued rules to implement the statute, including the automatic licensure provision and setting license and renewal fees. 4 CCR 902-3. Rule 3 requires that a student loan servicer seeking licensure under the automatic licensure provision submit the signed signature page to a currently operative contract showing that the servicer is a party to a contract awarded by the United States Secretary of Education under 20 U.S.C. § 1087f or any other document the Administrator determines serves as the functional equivalent. PHEAA did not comment during the public rulemaking process.

24. The Administrator made available a Colorado Federal Contractor Student Loan Servicing License Form, which asks for contact information, a license fee, and the signature page of the contract with ED. Exh. A.

25. In contrast, the Administrator's Other Servicer License Application requires information required in C.R.S. § 5-20-106(2) and sufficient to conduct the investigation required in C.R.S. § 5-20-106(3). Exh. B.

26. PHEAA obtained an SLSA license from the Administrator effective January 31, 2020. Accompanying its license form, PHEAA sent a letter informing the Administrator of its objections to her authority with respect to FDLP and ED-owned FFELP loans. PHEAA renewed its license effective January 31, 2021 and sent a letter accompanying its renewal also objecting to the Administrator's authority with respect to FDLP and ED-owned FFELP loans.

27. Sections 5-20-110 and 5-20-106 of the SLSA grant the Administrator the authority to conduct examinations and investigations of student loan servicers that are servicing student loans owned by Colorado residents.

28. On May 17, 2021, the Administrator's student loan servicing examiner sent PHEAA an examination initiation letter, requesting copies of PHEAA's servicing policies and procedures and sample documents. Exh. C.

29. On May 20, 2021, the Administrator and staff had a call with PHEAA's Deputy Chief Counsel to confer on the examination initiation letter.

30. On May 24, 2021, PHEAA provided a written response to the Administrator, declining to make available or send most of the requested documents and information. PHEAA agreed to produce certain documents related to its servicing

of commercially-held FFELP loans and private education loans under its AES business line. It refused to make available or send records requested related to its servicing of FDLP or FFELP loans owned by the Department of Education under its FedLoan Servicing line.

31. In failing to produce the requested documents and information, PHEAA, a licensee under the SLSA, has failed to satisfy its statutory duties and make available or send the documents and information requested by the Administrator, thereby preventing the Administrator from fulfilling her statutory duties under Colorado law to regulate the servicing of student loans in Colorado and protect Colorado borrowers.

V. FIRST CLAIM FOR RELIEF PRELIMINARY AND PERMANENT INJUNCTION

32. The Administrator repeats and realleges the paragraphs above, as if alleged herein.

33. The Administrator brings this action pursuant to C.R.S. sections 5-20-116 and 5-20-117, to enforce compliance with the SLSA.

34. PHEAA, a licensee under the SLSA, is required to maintain adequate records and to make them available or send them to the Administrator upon request. C.R.S. § 5-20-106(10).

35. In conducting an examination or investigation authorized by the SLSA, the Administrator may access, receive, and use any records or information belonging to a licensee and may direct, subpoena, or order a person to produce records the Administrator considers relevant to the inquiry. C.R.S. § 5-20-110(1)(a)–(c).

36. Pursuant to powers and duties granted by Colorado's General Assembly, the Administrator initiated an examination of PHEAA by requesting, in an examination initiation letter, copies of PHEAA's servicing policies and procedures and sample documents. PHEAA provided a written response refusing to produce the requested documents and information.

37. PHEAA and its agents, employees, and representatives have engaged in an act or practice constituting a violation of the SLSA, by refusing to produce the documents and information requested by the Administrator. C.R.S. §§ 5-20-106(10) and 5-20-110(1)(a)–(c). PHEAA and its agents, employees, and representatives will continue to engage in such violations unless this court compels compliance with the SLSA.

WHEREFORE, the Administrator requests judgment against PHEAA as follows:

(i) Pursuant to section 5-20-116 of the SLSA, for a preliminary and permanent injunction compelling PHEAA and its officers, directors, agents, servants, employees, attorneys, heirs, successors, and assigns, to comply with sections 5-20-106(10) and 5-20-110(1)(a)–(c) of the SLSA, and to provide the Administrator with the requested documents and information; and

(ii) Pursuant to section 5-20-117 of the SLSA, awarding the Administrator her reasonable costs and attorney's fees, together with all such further relief as the Court deems just.

DATED: May 26, 2021

PHILIP J. WEISER
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/s/ Nikolai N. Frant

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