
ASSURANCE OF DISCONTINUANCE

In the Matter of:

Pennsylvania Higher Education Assistance Agency,

Respondent.

This Assurance of Discontinuance ("AOD") dated as of September 8, 2021, is entered into by and among Martha Fulford, Administrator, Uniform Consumer Credit Code ("the Administrator") and the Pennsylvania Higher Education Assistance Agency d/b/a FedLoan Servicing ("PHEAA"). The Administrator and PHEAA are hereinafter collectively referred to as the "Parties."

WHEREAS, on May 26, 2021, the Administrator filed a Complaint against PHEAA d/b/a FedLoan Servicing asserting a single claim for Preliminary and Permanent Injunction (the "Action"), requesting a judgment requiring PHEAA to comply with Sections 5-20-106(10) and 5-20-110(1)(a)-(c) of the Colorado Student Loan Equity Act ("SLEA"), and to provide the Administrator with certain requested PHEAA documents.

WHEREAS, PHEAA denies any wrongdoing, and denies any liability to the Administrator;

WHEREAS, the Parties agree and understand that the execution of this AOD is not an admission of fault or wrongdoing by any party, and that it shall not be construed as such;

WHEREAS, the Parties, having consulted with their respective attorneys, desire to avoid the expense, burden and inconvenience of further litigation, and desire to settle their disputes relating to the Action;

WHEREAS, in the interests of avoiding the time, expense, and uncertainty of continued litigation, the Parties now wish to compromise and settle the Action;

NOW, THEREFORE, in consideration of the mutual covenants herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, intending to be legally bound, in full and final settlement of the Action, the Parties hereby agree as follows:

1. The Administrator is the duly appointed Administrator of the Uniform Consumer Credit Code. C.R.S. § 5-6-103.

2. PHEAA is a national student loan servicer headquartered at 1200 N. Seventh Street, Harrisburg, PA 17102. PHEAA performs loan servicing under both the American Education Services ("AES") and the FedLoan Servicing ("FLS") business names.

3. PHEAA maintains an active Colorado license issued by the Administrator to service Colorado residents' student loans, under the SLEA. C.R.S. 5-20-101, et seq.

4. In compliance with Section 5-20-105, and pursuant to the automatic licensure provisions for a federal student loan servicing contractor set forth in Section 5-20-106(1), PHEAA obtained an SLEA license from the Administrator effective January 31, 2020.

5. PHEAA has operated and continues to operate in Colorado as a student loan servicer, as defined in Section 5-20-103(8).

6. The SLEA provides that the Administrator may 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 SLEA by bringing a civil action to restrain servicers from violating the SLEA 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, and an order for refunds and / or civil penalties. C.R.S. §§ 5-20-116; 5-20-117.

7. 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.

8. 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 October 1, 2003 and July 1, 2010. 20 U.S.C. § 1087i-1. FDLP and FFELP provide certain borrower protections, including income-based repayment plans and forbearance options.

9. 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. 20 U.S.C. § 1087e(m).

10. The United States Department of Education (“ED”) is empowered to enter into contracts for the servicing and collection of FDLP and FFELP loans, including under the PSLF program. 20 U.S.C. §§ 1087f, 1087i.

11. Federal Student Aid (“FSA”), a part of ED, and PHEAA entered into a contract for PHEAA to service and administer the PSLF program subject to FSA’s oversight, directives, and ultimate decision-making authority.

12. On May 17, 2021, the Colorado Department of Law (“CDL”) notified PHEAA in a letter that it would “be conducting an examination” of PHEAA pursuant to Sections 106 and 110 of the SLEA.

13. As part of the examination, the CDL requested that PHEAA produce certain documents related to AES’s and FLS’s servicing policies and procedures (the “AES Documents” and “FLS Documents,” respectively).

14. On May 20, 2021, representatives of PHEAA and the CDL had a telephone call regarding the examination request, during which the CDL verified the examination encompassed the time-period from March 12, 2020 to May 17, 2021, and that the examination included PHEAA’s loan servicing activity under both the AES and FLS business names.

15. On May 24, 2021, PHEAA sent the CDL a letter in response to the examination request. In the May 24, 2021 letter, PHEAA agreed to produce the requested AES Documents by June 14, 2021. PHEAA objected to the production of the FLS Documents.

16. On May 25, 2021, representatives of PHEAA and the Colorado Attorney General had a second telephone call conferring on the examination request.

17. On May 26, 2021, the Administrator filed the Action against PHEAA asserting a single claim for Preliminary and Permanent Injunction, requesting a judgment

requiring PHEAA “to comply with sections 5-20-106(10) and 5-20-110(1)(a)-(c) of the SLEA, and to provide the Administrator with the requested [FLS Documents].”

18. On June 4, 2021, PHEAA sent the Administrator a letter agreeing to produce the FLS Documents by June 14, 2021.

19. On June 14, 2021, PHEAA produced the documents and information requested in the CDL's May 17, 2021 letter, including both the requested AES documents and FLS Documents.

20. On July 8, 2021, PHEAA notified ED that it will not accept an extension of its contract with FSA, which expires December 14, 2021. FSA is transferring the federally-owned loans to a different servicer.

21. In order to resolve the Action, the Parties agree as follows:

- a. Except as otherwise required by federal law, a federal student education loan agreement, or a contract between the federal government and a licensee, PHEAA shall, to the extent required under Section 5-20-106(10) of the SLEA, maintain adequate records (“Records”) of each student education loan transaction, including those related to servicing ED-owned FDLP and FFELP loans, until (i) at least two years after the final payment on the student education loan, (ii) the date of the assignment of the student education loan, or (iii) the date of the transfer of the student education loan to a different servicer, whichever occurs first.
- b. In the course of the Administrator's current examination and any future examination or investigation authorized by the SLEA of PHEAA for federally owned records, and while PHEAA is servicing federally-owned loans and maintaining Records as set forth in paragraph 21(a), PHEAA shall comply with the Administrator's authority to access, receive, and use records or information pursuant to Section 5-20-110(a)-(c). To the extent the Administrator requests any records or data subject to ED's May 28, 2021 guidance to FSA vendors on outside requests for ED records and data, or subsequent guidance from ED on the same topic, PHEAA shall follow ED's guidance, and if authorized by ED, shall make the records available or send the records to the Administrator under Section 5-20-106(10) within a reasonable time after receiving the authorization from ED.
- c. Within three (3) business days of this AOD being fully executed, the Parties shall file a Stipulated Notice of Dismissal stating, “Pursuant

to Rule 41 and the Parties' Settlement AOD, the Parties stipulate to the dismissal of this action, with prejudice, each party to bear his, her or its own attorneys' fees and costs."

22. This AOD is binding against PHEAA and its officers; agents; servants; employees; attorneys; affiliates; and subsidiaries.

23. This AOD resolves and settles all civil claims the Administrator and the CDL has or had against PHEAA based on the allegations and facts set forth in the Complaint in the Action regarding PHEAA's alleged noncompliance with the May 17, 2021 document requests. Nothing in this AOD shall be construed as a release of any other claim by the Administrator or PHEAA.

24. This AOD shall in no way limit, constrain, abridge, abrogate, waive, release, or otherwise prejudice the right of any consumer to bring any private action under the law.

25. Each party shall bear its own costs and attorney's fees in connection with the Action.

26. PHEAA has had the opportunity to be represented by legal counsel, and to consult with counsel for the Administrator to negotiate a resolution of this matter. PHEAA knowingly and voluntarily enters into this AOD.

27. This AOD may be executed in any number of counterparts and by any number of counterpart signature pages, each of which shall be an original with the same effect as if each of the signatures were affixed to the same instrument.

28. The Parties acknowledge that this AOD contains the entire agreement of the Parties, that all prior oral or written statements, representations, and covenants are merged into this AOD, and that any other agreements not expressly stated herein are void and have no further force and effect. The Parties agree that this AOD may not be amended or modified except by a subsequent, written agreement executed by all of the Parties.


29. The Parties agree that if any court or tribunal of competent jurisdiction determines that any provision of this AOD is illegal, invalid, or unenforceable, such illegal, invalid, or unenforceable provision shall be severed from the AOD and the remainder of this AOD shall not be affected thereby and shall remain in full force and effect.

30. The AOD was jointly drafted and no ambiguity shall be interpreted against any Party as the primary drafter.

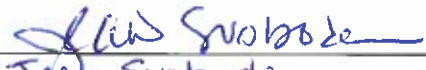
31. The Parties agree that this AOD shall not be effective until the date this AOD is signed by the Attorney General of the Commonwealth of Pennsylvania, or his designee.

32. The Parties enter into this AOD pursuant to the SLEA, Section 5-20-115.

PENNSYLVANIA HIGHER EDUCATION
ASSISTANCE AGENCY d/b/a
FEDLOAN SERVICING

By: 
Its: James H. Steeley
President and CEO

APPROVED AS TO FORM AND
LEGALITY:

By: 
Its: Sean Svoboda
Chief Legal Officer

APPROVED AS TO FORM AND
LEGALITY:

By: _____
Deputy Attorney General
Commonwealth of Pennsylvania

ADMINISTRATOR, COLORADO
UNIFORM CONSUMER CREDIT CODE

Martha U. Fulford

9/8/2021

By: Martha Fulford
Its: Administrator, Uniform Consumer Credit
Code

APPROVED AS TO FORM:

PHILIP J. WEISER, Attorney General for
the State of Colorado

Philip J. Weiser

9/8/2021

By: Philip Sparr
Its: Assistant Attorney General, Consumer
Credit Enforcement Unit

