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8
9 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
10 OF THE STATE OF CALIFORNIA

11 In the Matter of:	) NMLS NO. 1619466
12 THE COMMISSIONER OF BUSINESS	) CITATIONS INCLUDNG:
13 OVERSIGHT,	) 1) DESIST AND REFRAIN ORDER;
14 Complainant,	) AND
15 v.	) 2) ASSESSMENT OF
16 PENNSYLVANIA HIGHER EDUCATION	) ADMINISTRATIVE PENALTIES;
17 ASSISTANCE AGENCY, d/b/a American	) (FINANCIAL CODE SECTIONS 28130(h),
18 Education Services (AES),	) 28170(a), CALIFORNIA CODE OF
19 Respondent.	) REGULATIONS TITLE 10, SECTIONS
	) 2040(b), 2040(c), and 2041(a)

20 Manuel P. Alvarez, the Commissioner of the Department of Business Oversight of the State
21 of California (Commissioner), finds the following:

22 **I.**

23 **STATEMENT OF FACTS**

24 1. The Commissioner regulates the administers, licenses, and regulates Student Loan
25 Services under the Student Loan Servicers Act (Finance Code § 28100 et seq.) (SLSA).

26 2. The Student Loan Servicing Act applies to companies that manage or “service” student
27 loans in California, designates the Department of Business Oversight (DBO) to administer and
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1 enforce its provisions, and has three primary components: (i) licensure; (ii) examination; and (iii)
2 enforcement. (Fin. Code, § 28100, et seq.)

3 3. SLSA broadly defines “student loan” to mean “any loan made solely for use to finance a
4 postsecondary education and costs of attendance at a postsecondary institution” (Fin. Code, §
5 28102, subd. (m)(1).) This definition encompasses private student loans made by commercial
6 institutions, such as banks, credits unions, and other types of lending institutions.

7 4. At all relevant times, Pennsylvania Higher Education Assistance Agency (PHEAA) is a
8 corporation with a principle place of business at 1200 North 7th Street, Harrisburg, PA 17102-1444
9 and is issued a SLSA license in this state, NMLS No. 1619466.

10 5. Financial Code section 28152 provides that “the commissioner shall examine the affairs of
11 each licensee for compliance with this division. The Commissioner and his or her appointees may
12 examine the books, records, and documents of the licensee...” (Fin. Code, §28152, subd. (a).)

13 6. Pursuant to statutory mandate and the Commissioner’s authority and power, (Fin. Code,
14 §§ 28108, subd. (a), & 28152, subd. (a)), the DBO conducted an on-site examination of PHEAA’s
15 private loan portfolio on the weeks of January 13, 2020 and February 3, 2020.

16 7. During the examination, among other things, DBO discovered the following:

- 17 (a) PHEAA did not inquire of the borrower serviced whether the borrower preferred to opt
18 out of paid ahead status on the borrower’s student loan.
- 19 (b) PHEAA’s secure website for the borrowers lacked information displayed for the
20 borrower to know if the borrower was paying under an alternative repayment plan or
21 has a pending application. This omission on the secure website was remedied during
22 the examination.
- 23 (c) PHEAA failed to provide instructions, on its secure website or otherwise, on how a
24 borrower can obtain a full payment history.
- 25 (d) PHEAA failed to have a toll-free number prominently displayed on the homepage of
26 its public website. This issue was remedied during the examination.

27 **II.**

28 **STATUTORY AUTHORITY**

8. Finance Code section 28130 provides in pertinent part:

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A licensee shall do all of the following:

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(h)(1) Except as provided in federal law or required by a student loan agreement, a licensee shall inquire of a borrower how to apply an overpayment to a student loan. A borrower’s direction on how to apply an overpayment to a student loan shall stay in effect for any future overpayments during the term of a student loan until the borrower provides different directions.

(2) For purposes of this subdivision, “overpayment” means a payment on a student loan in excess of the monthly amount due from a borrower on a student loan, also commonly referred to as a prepayment.

9. 10 California Code of Regulations section 2040(b) provides in pertinent part, “The consolidate report required to be maintained must include the information specified in Section 2042, subdivision (b) of these rules. 10 California Code of Regulations section 2042 states that:

...

(b) At a minimum, the aggregate student loan servicing report shall contain the following information, with respect to each loan serviced:

- (1) Borrower name;
- (2) Number of student loan(s) serviced for each borrower;
- (3) Loan number, for each loan;
- (4) Loan type, i.e. Federal Direct Loan, FFEL Loan; Perkins Loan; private student loan.
- (5) Loan distribution amount and date, for each loan;
- (6) Interest rate(s) and maturity date, or number of monthly payments required to repay the loan, for each loan;
- (7) Loan balance and status, for each loan;
- (8) Cumulative balance owing for each borrower;
- (9) Whether borrower has an application pending for, or is repaying under, an alternative repayment plan, listing the plan chosen; and

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III.

CITATION INCLUDING DESIST AND REFRAIN ORDER

13. Pursuant to Financial Code section 28170, the Commissioner hereby orders PHEAA with regard to its private loan portfolio, to desist and refrain from the following:

(a) failing to inquire of borrowers if the borrower prefer to opt out of paid ahead status, in violating Financial Code section 28130(h)(1).

(b) failing to provide instructions on how a borrower can obtain a full payment history, in violation of California Code of Regulations section 2040(c).

VI.

CITATION INCLUDING ADMINISTRATIVE PENALTIES

14. Pursuant to Financial Code section 28170, is the Commissioner hereby assesses and orders PHEAA to pay an administrative penalties of ten thousand dollars (\$10,000.00) based on the above described violations of Financial Code section 28130(h)(1), California Code of Regulations sections 2040(b) and (c) and California Code of Regulations section 2041(a).

15. The administrative penalties shall be made payable in the form of a cashier’s check or Automated Clearing House deposit to the Department of Business Oversight and transmitted to the attention of Accounting – Litigation, at the Department of Business Oversight, 1515 K Street, Suite 200, Sacramento, California 95814. Notice of the payment shall be concurrently sent to Paul Yee, Senior Counsel, Department of Business Oversight, One Sansome Street, Suite 600, San Francisco, California 94104, Email: Paul.Yee@dbo.ca.gov. The penalty shall be received by the Department no later than fifteen calendar days from PHEAA’s receipt from the Department of this Citation with Desist and Refrain Order and Assessment of Administrative Penalties (Order) signed by the Commissioner.

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16. This Order is necessary, in the public interest, for the protection of borrowers in this state and consistent with the purpose, policies and provisions of the Student Loan Servicing Law.

Dated: July 28, 2020

MANUEL P. ALVAREZ
Commissioner of Business Oversight

By _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division