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8  
9 BEFORE THE DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION  
10 OF THE STATE OF CALIFORNIA

11  
12 In the Matter of: ) NMLS NO.: 1619466  
13 THE COMMISSIONER OF FINANCIAL )  
PROTECTION AND INNOVATION, ) SETTLEMENT AGREEMENT  
14 ) (including Order Rescinding Citation issued July  
Complainant, ) 28, 2020)  
15 v. )  
16 PENNSYLVANIA HIGHER EDUCATION )  
ASSISTANCE AGENCY, d/b/a American )  
17 Education Services (AES), )  
18 Respondent. )  
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24 The Commissioner of Financial Protection and Innovation (Commissioner) and  
25 Pennsylvania Higher Education Assistance Agency (PHEAA) enter into this Settlement Agreement  
26 with respect to the following facts:

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**I.**

**RECITALS**

A. The Commissioner has jurisdiction over the licensing and regulation of student loan servicing in this state under the California Student Loan Servicing Act (SLSA) (Fin. Code, § 28100 et seq.) and title 10 of the California Code of Regulations (CCR) (Cal. Code Regs., § 2032 et seq.).

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

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

D. At all relevant times, Pennsylvania Higher Education Assistance Agency (PHEAA) is a statutorily created instrumentality in the Commonwealth of Pennsylvania<sup>1</sup> with a principle place of business at 1200 North 7<sup>th</sup> Street, Harrisburg, PA 17102-1444 and is issued a license pursuant to SLSA in the State of California, NMLS No. 1619466.

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

F. Pursuant to statutory mandate and the Commissioner’s authority and power, (Fin. Code §§ 28108, subd. (a), & 28152, subd. (a)), the DFPI (through its predecessor agency, Department of Business Oversight) conducted an onsite examination of PHEAA’s private loan portfolio during the weeks of January 13, 2020 and February 3, 2020.

G. As a result of the examination, among other things, DFPI discovered the following:

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<sup>1</sup> See P.S. §§ 5101-5199.9

1 (1) PHEAA did not inquire of the borrower serviced whether the borrower preferred  
2 to opt out of paid ahead status on the borrower’s student loan an alleged violation of  
3 Financial Code section 28310(h)(1) and (2). This omission was remedied by June 30,  
2020.

4 (2) PHEAA’s secure website for the borrowers lacked information displayed for the  
5 borrower to know if the borrower was paying under an alternative repayment plan or  
6 has a pending application an alleged violation of 10 California Code of Regulations  
7 section 2042. This omission on the secure website was remedied during the  
8 examination.

9 (3) PHEAA failed to provide instructions, on its secure website or otherwise, on how a  
10 borrower can obtain a full payment history an alleged violation of 10 California Code  
11 of Regulations section 2040(c). This omission was remedied by June 30, 2020.

12 (4) PHEAA failed to have a toll-free number prominently displayed on the homepage  
13 of its public website an alleged violation of 10 California Code of Regulations section  
14 2041(a). This issue was remedied during the examination.

15 H. As a result of the examination noted in paragraph F, on July 28, 2020, pursuant to  
16 Financial Code section 28710, the Commissioner issued to PHEAA a Citation with Desist and  
17 Refrain Order and Penalty for \$10,000.

18 I. PHEAA timely requested a hearing pursuant to Financial Code section 28710(c) on  
19 the Citation with Desist and Refrain Order and Penalty for \$10,000.

20 J. Now, it is the intention of the Commissioner and PHEAA (Commissioner and  
21 PHEAA together referred to as the Parties) to resolve this matter without an administrative hearing  
22 or other litigation.

23 NOW, THEREFORE, in consideration of the foregoing and the terms and conditions set  
24 forth herein, the Parties agree as follows:

25 **II.**

26 **TERMS AND CONDITIONS**

27 1. Purpose. This Settlement Agreement resolves the issues before the Commissioner in  
28 a manner that avoids the expense of a hearing and other possible court proceedings, protects  
consumers, is in the public interest, and is consistent with the purposes, policies, and provisions of  
the applicable law.

1           2.       Order Rescinding Citation with Desist and Refrain Order and Penalty. The  
2 Commissioner hereby rescinds the Citation with Desist and Refrain Order and Penalty issued to  
3 PHEAA on July 28, 2020.

4           3.       Agreement to Remain in Compliance. In consideration of the Commissioner  
5 rescinding the Citation noted in paragraph 2 above, PHEAA agrees for as long as it maintains a  
6 license in California pursuant to the SLSA, that it will remain in compliance with the applicable  
7 statutes and/or regulations for the deficiencies noted in paragraph G above.

8           4.       Administrative Penalty. PHEAA shall pay an administrative penalty pursuant to  
9 Financial Code section 228710 of \$5,000.00 no later than 30 days after the effective date of this  
10 Settlement Agreement as defined in paragraph 20. The penalty must be made payable in the form of  
11 a cashier's check or Automated Clearing House deposit to the Department of Financial Protection  
12 and Innovation and transmitted to the attention of Accounting – Litigation, at the Department of  
13 Financial Protection and Innovation, 2101 Arena Boulevard, Sacramento, California 95834-2036.  
14 Notice of the payment must be concurrently sent to Paul Yee, Senior Counsel, Department of  
15 Financial Protection and Innovation, One Sansome Street, Suite 600, San Francisco, California  
16 94104-4448.

17           5.       Full and Final Settlement. The Parties hereby acknowledge and agree that this  
18 Settlement Agreement is intended to constitute a full, final, and complete resolution of PHEAA's  
19 alleged violations set forth in the Recitals only, and that no further proceedings or actions will be  
20 brought by the Commissioner based on such alleged Violations, excepting any proceeding to  
21 enforce compliance with the terms of this Settlement Agreement or action if such proceeding is  
22 based upon discovery of new and further alleged violations of the SLSA that do not form the basis  
23 for the Settlement Agreement or which PHEAA knowingly concealed from the Commissioner.  
24 This Settlement Agreement specifically does not prohibit or restrict the Commissioner from making  
25 any other orders or bringing any action based on other alleged violations discovered during the  
26 examination described in paragraph F.

27           6.       Information Willfully Withheld. The Settlement Agreement may be rescinded and  
28 the Commissioner may suspend or revoke the SLSA license issued to PHEAA if the Commissioner

1 later finds out that PHEAA knowingly or willfully withheld information used and relied upon in the  
2 Settlement Agreement.

3 7. Assisting Other Agencies. The Parties further acknowledge and agree that nothing in  
4 the Settlement Agreement shall limit the Commissioner's ability to assist any other agency (city,  
5 county, state, or federal) with any prosecution, administrative, civil, or criminal, brought by any  
6 such agency against PHEAA or any other person based upon any of the activities alleged in this  
7 matter or otherwise.

8 8. Headings. The headings to the paragraphs of this Settlement Agreement are inserted  
9 for convenience only and will not be deemed a part hereof or affect the construction or interpretation  
10 of the provisions hereof.

11 9. Binding. The Settlement Agreement is binding on all heirs, assigns, or successors in  
12 interest.

13 10. Reliance. Each of the parties represents, warrants, and agrees that in executing this  
14 Settlement Agreement it has relied solely on the statements set forth herein and the advice of its  
15 own counsel. Each of the parties further represents, warrants, and agrees that in executing this  
16 Settlement Agreement it has placed no reliance on any statement, representation, or promise of any  
17 other party, or any other person or entity not expressly set forth herein, or upon the failure of any  
18 party or any other person or entity to make any statement, representation or disclosure of anything  
19 whatsoever. The parties have included this clause: (1) to preclude any claim that any party was in  
20 any way fraudulently induced to execute this Settlement Agreement; and (2) to preclude the  
21 introduction of parol evidence to vary, interpret, supplement, or contradict the terms of this  
22 Settlement Agreement.

23 11. Waiver, Amendments, and Modifications. No waiver, amendment, or modification  
24 of this Settlement Agreement will be valid or binding unless it is in writing and signed by each of  
25 the parties. The waiver of any provision of this Settlement Agreement will not be deemed a waiver  
26 of any other provision. No waiver by either party of any breach of, or of compliance with, any  
27 condition or provision of this Agreement by the other party will be considered a waiver of any other  
28 condition or provision or of the same condition or provision at another time.

1           12.    Full Integration. This Settlement Agreement is the final written expression and the  
2 complete and exclusive statement of all the agreements, conditions, promises, representations, and  
3 covenant between the parties with respect to the subject matter hereof, and supersedes all prior or  
4 contemporaneous agreements, negotiations, representations, understandings, and discussions  
5 between and among the parties, their respective representatives, and any other person or entity, with  
6 respect to the subject matter covered hereby.

7           13.    Counterparts. This Settlement Agreement may be executed in one or more separate  
8 counterparts, each of which when so executed, shall be deemed an original. Such counterparts shall  
9 together constitute a single document.

10          14.    Effect Upon Future Proceedings. If Respondents apply for any license, permit or  
11 qualification under the Commissioner's current or future jurisdiction, or are the subject of any future  
12 action by the Commissioner to enforce this Settlement Agreement, then the subject matter hereof  
13 shall be admitted for the purpose of such application(s) or enforcement proceedings(s).

14          15.    Voluntary Agreement. PHEAA enters into the Settlement Agreement voluntarily  
15 and without coercion and acknowledges that no promises, threats, or assurances have been made by  
16 the Commissioner, or any officer or agent thereof, about the Settlement Agreement. Nothing in this  
17 Agreement shall constitute or be deemed an admission that PHEAA violated any law.

18          16.    Notice. Any notices required under the Consent Order shall be provided to  
19 each party at the following addresses:

20           If to Respondent to:                   Donald Bradley, Esq.  
21   Musick Peeler & Garrett LLP  
22   650 Town Center Drive, Suite 1200  
23   Costa Mesa, California 92626-1925  
24   Email: d.bradley@musickpeeler.com

25           If to the Commissioner to:           Paul Yee, Senior Counsel  
26   Department of Financial Protection and Innovation  
27   One Sansome Street, Suite 600  
28   San Francisco, California 94104-4448  
   Email: paul.yee@dfpi.ca.gov

18          18.    Signatures. An electronic signature, or a faxed, photocopied, or scanned copy of an  
28 original signature, shall be deemed the same as an original signature.

1           19.    Public Record. PHEAA acknowledges that the Settlement Agreement shall be  
2 matters of public record.

3           20.    Effective Date. The Settlement Agreement shall become final and effective when  
4 signed by all signatories listed below and delivered by the Commissioner to PHEAA or PHEAA’s  
5 agent via e-mail at [d.bradley@musickpeeler.com](mailto:d.bradley@musickpeeler.com).

6           21.    Authority to Sign. Each signatory hereto covenants that he/she possesses all  
7 necessary capacity and authority to sign and enter into this Settlement Agreement and undertake the  
8 obligations set forth herein.

9                         IN WITNESS WHEREOF, the parties hereto have approved and executed the  
10 Settlement Agreement on the dates set forth opposite their respective signatures.

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12 Dated: September 6, 2020

MANUEL P. ALVAREZ  
Commissioner of Financial Protection and Innovation

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17 By \_\_\_\_\_  
18 MARY ANN SMITH  
19 Deputy Commissioner  
20 Enforcement Division

21 Dated: October 30, 2020

PENNSYLVANIA HIGHER EDUCATION  
ASSISTANCE AGENCY  
Respondent

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Approved as to form and legality

Approved as to form and legality

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Jean Svoboda  
PHEAA General Counsel

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Deputy Attorney General of the  
Commonwealth of Pennsylvania