

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

SUPERIOR COURT
CIVIL ACTION NO. 1784CV02682

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| <p>COMMONWEALTH OF MASSACHUSETTS,</p> <p style="text-align: center;">Plaintiff,</p> <p>v.</p> <p>PENNSYLVANIA HIGHER EDUCATION ASSISTANCE AGENCY, d/b/a FedLoan Servicing,</p> <p style="text-align: center;">Defendant.</p> | <p style="text-align: center;">COMPLAINT</p> |
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 AUG 23 2017
 SUPERIOR COURT-CIVIL
 MICHAEL JOSEPH DONOVAN
 CLERK/MAGISTRATE

I. INTRODUCTION

1. The Commonwealth of Massachusetts (the “Commonwealth”), by and through its Attorney General, Maura Healey, brings this enforcement action pursuant to the Massachusetts Consumer Protection Act, M.G.L. c. 93A, § 4, and the Consumer Financial Protection Act (“CFPA”), 12 U.S.C. § 5552(a)(1), against the Pennsylvania Higher Education Assistance Agency, d/b/a FedLoan Servicing (“PHEAA”). The Commonwealth seeks restitution, injunctive relief, civil penalties and reimbursement of its costs and expenses for PHEAA’s unfair and deceptive student loan servicing practices.

2. PHEAA is one of the largest student loan servicers in the country, managing over a quarter of the nation’s \$1.4 trillion student loan debt on behalf of various lenders for millions of borrowers across the United States. PHEAA manages the federal student loan accounts of hundreds of thousands of Massachusetts residents with a total outstanding principal balance exceeding \$5 billion.

3. In 2012, the United States Department of Education (the “Department”) awarded PHEAA an exclusive contract to manage two federal programs created by Congress to address the disconnect between the rising cost of higher education and society’s need for skilled workers in low-paying but vital public sector jobs: the Public Service Loan Forgiveness (“PSLF”) program and the Teacher Education Assistance for College and Higher Education (“TEACH”) Grant program. Student borrowers participating in these programs therefore have no choice but to have their federal loans serviced by PHEAA.

4. The PSLF program allows public servants—such as police officers, military personnel, nurses, social workers and government employees—to commit to public service and to manage their student loan debt by providing them with loan forgiveness after 10 years of service.

5. The TEACH Grant program provides financial grants to students who display “high academic aptitude”, pursue teaching careers in low-income schools for at least 4 years and teach subjects in high-need fields, such as math, science or foreign languages.

6. Upwards of one million student borrowers have committed themselves to public service jobs nationally and are fulfilling the substantive requirements necessary to qualify for loan forgiveness and grants. Consistent with Congress’ intent in creating the PSLF and TEACH Grant programs, these student borrowers are playing an essential role in our society by serving communities to keep people safe, healthy and educated.

7. PHEAA is depriving dedicated public servants of the financial assistance that Congress promised to them and that they need to avoid facing financial ruin for choosing lower-paying public sector careers.

8. Indeed, PHEAA's servicing failures have harmed Massachusetts student borrowers, depriving them of months that should have counted toward their loan forgiveness, causing them to lose financial grants and further saddling them with debt.

9. In addition, PHEAA has made it more difficult for student borrowers to manage their debt by overcharging them and misprocessing their applications for Income Driven Repayment ("IDR") plans that make borrowers' monthly payments more affordable.

10. Rather than fulfill its responsibilities to borrowers as the exclusive servicer of the PSLF and TEACH Grant programs, PHEAA has positioned itself as a barrier to borrowers' chances of long term financial success.

11. PHEAA is aware of these problems yet has failed to rectify them. Instead, PHEAA has consistently shifted the consequences of the flaws in its servicing system and its processing failures onto the borrowers themselves. The relief the Commonwealth seeks is necessary to remedy borrower harm and to prevent future harms.

II. JURISDICTION

12. The Attorney General is authorized to bring this action pursuant to M.G.L. c. 93A, § 4 and 12 U.S.C. § 5552(a)(1).

13. This Court has jurisdiction over the subject matter of this action pursuant to M.G.L. c. 93A, § 4, M.G.L. c. 214, § 1 and 12 U.S.C. § 5552(a)(1).

14. This Court has jurisdiction over PHEAA pursuant to M.G.L. c. 223A, §§ 3(a), (b). Venue is proper in Suffolk County pursuant to M.G.L. c. 223, § 5 and M.G.L. c. 93A, § 4.

III. THE PARTIES

15. The Plaintiff is the Commonwealth of Massachusetts, represented by Attorney General Maura Healey, who brings this action in the public interest.

16. PHEAA is a national student loan servicer with headquarters located at 1200 North 7th Street, Harrisburg, Pennsylvania 17102. PHEAA does business as FedLoan Servicing.

IV. FACTUAL ALLEGATIONS

A. Federal Student Loan Programs

17. The federal government provides financial assistance to students pursuing higher education under Title IV of the Higher Education Act (“HEA”) of 1965, as amended. This federal assistance is designed to expand access to higher education.

18. In 1994, the Department began originating student loans directly to borrowers under the William D. Ford Direct Student Loan (“Direct Loan”) program.

19. Federal student loan eligibility requirements, interest rates, and repayment terms differ notably from typical loan products and are designed to further the HEA’s goals of increasing access to higher education.

20. When federal student loans enter repayment, a number of repayment options are available to borrowers. For instance, under the 10-year Standard Repayment Plan, borrowers’ monthly payments are fixed and calculated to allow borrowers to repay their debt in ten years.

21. Recognizing the challenges that student borrowers face when repaying their loans, the federal government also offers multiple Income Driven Repayment (“IDR”) plans that are designed to make the repayment of student loans less onerous and to help borrowers manage their student loan debt. These plans include the Income-Contingent Repayment (“ICR”) plan, the Income-Based Repayment (“IBR”) plan, the Pay as You Earn Repayment plan (“PAYE”), and the more recent Revised Pay as You Earn Repayment plan (“REPAYE”). Under IDR plans, a borrower’s monthly payment amount is determined based on income and family size. This

payment amount is designed to provide a more affordable option than would be available under other repayment options, including the 10-year Standard Repayment plan.

22. In 2007, under the College Cost Reduction and Access Act (“CCRA”), 20 U.S.C. 1070 *et seq.*, Congress established the PSLF and TEACH Grant programs.

i. The Public Service Loan Forgiveness Program

23. Congress recognized that when students graduate with significant amounts of debt, pursuing desired public service careers is not an option for them. The PSLF program was designed to address this problem and to seize on students’ “idealism” by allowing them “to pursue a career in public service and be able to take those jobs . . . often at lower pay . . .” while also “relieving themselves of the huge burden of debt they face.” 153 Cong. Rec. S11,245 (daily ed. Sept. 7, 2007) (statement of Sen. Sherrod Brown).

24. Loan forgiveness under the PSLF program is only available if borrowers meet several specific qualifications. Their federal student loans must be Direct Loans, or must be consolidated into the Direct Loan program. Borrowers must make payments under a qualifying repayment plan, while employed full time in a qualifying public service job. Qualifying repayment plans include the 10-year Standard Repayment plan or any of the IDR plans. Borrowers must make a total of 120 monthly payments under one of these repayment plans (the payments need not be consecutive). Months during which loans are in forbearance do not qualify towards loan forgiveness. In addition, a borrower must not be in default on his or her Direct Loans and must be employed in an approved public service job at the time of loan forgiveness.

25. Borrowers seeking loan forgiveness under the PSLF program submit Employment Certification Forms (“ECF”) to confirm their qualifying employment. Borrowers are not required to submit these forms prior to applying for loan forgiveness under the PSLF program, but may

choose to do so to track their progress towards loan forgiveness. Once a borrower has made 120 qualifying monthly payments, he or she must complete a PSLF application in order to receive loan forgiveness.

26. Borrowers who began making qualifying PSLF payments when the program came into effect will start becoming eligible for loan forgiveness under the PSLF program in October 2017.

ii. The TEACH Grant Program

27. Congress enacted the TEACH Grant program so that highly qualified teachers who want to assist low-income communities can do so without incurring crippling student loan debt. In supporting the CCRA Act, which established the TEACH Grant program, one Senator remarked, “[t]his is how our country should be investing its money: helping to open the door to our children’s dreams, not just for their benefit, but for the benefit of our communities, our economy, our Nation, and all of humanity.” 153 Cong. Rec. S11,251 (daily ed. Sept. 7, 2007) (statement of Sen. Benjamin Cardin).

28. Under the TEACH Grant program, students receive up to \$4,000 per year to help pay for the education required to pursue a teaching career.

29. To qualify for a TEACH Grant, students must display “high academic aptitude” and complete specified coursework relevant to their field. If the applicant is a current teacher seeking a TEACH Grant for further education, the applicant must have expertise in a high-need field where there is a shortage of teachers, such as math, science or a foreign language.

30. TEACH Grant recipients must serve as full-time teachers for a total of at least four academic years within eight years after completing the schooling for which they received TEACH Grants. They must also teach in low-income schools and in high-need fields.

31. If a teacher fails to complete the requisite service, the amount of money received through TEACH Grants gets converted into a loan he or she must repay, with interest accruing retroactively from the date on which the grant was disbursed.

32. Student borrowers who accept TEACH Grants are required to submit certification forms completed by the Chief Administrative Officers of the schools at which they are teaching to confirm their employment.

B. The Pennsylvania Higher Education Assistance Agency

33. The Pennsylvania General Assembly created PHEAA in 1963 as a public corporation and government instrumentality with a mission to improve higher education opportunities for Pennsylvania residents by funding student loans and grants.

34. Decades later, PHEAA altered its business model and launched a national student loan servicing company, FedLoan Servicing (“FedLoan”), to service federally owned loans originated under the Direct Loan program.

35. In 2009, PHEAA was one of four “Title IV” servicers to be awarded a Federal Loan Servicing Contract by the Department to service federally-owned loans nationally.

36. PHEAA’s enabling statute was never amended to contemplate servicing Direct Loans on a national basis as part of its core mission.

37. The Department’s contract with PHEAA provides, “[i]t is the intent of the Department to procure a performance-based contract(s) that promotes competition and provides best of business services. To achieve this goal, the Department expects each servicer to provide commercially available services that will yield high performing portfolios and high levels of customer satisfaction.” Solicitation Number: FSA-TitleIV-09, Attachment A-1, page 3, *available at* <https://www2.ed.gov/policy/gen/leg/foia/contract/pheaa-061709.pdf>.

38. With this major addition to PHEAA's commercial services, PHEAA's current out-of-state loan servicing business, which obligates it to manage loan accounts for millions of student borrowers across the country, now dwarfs its statutorily-mandated work funding student loans and grants for Pennsylvania residents.

39. As the Fourth Circuit found when it held that PHEAA is not an arm-of-the-state in *Oberg v. PHEAA* ("*Oberg III*"), 804 F. 3d 646, 677 (4th Cir. 2015), "PHEAA is a very wealthy corporation engaging in nationwide commercial student-loan financial-services activities."

40. Indeed, the revenue PHEAA earns by servicing Direct Loans is increasing each year. According to PHEAA's most recent financial statement:

For the nine months end[ing] March 31, 2017, [Direct Loan] servicing fees were \$145.5 million, a 5.2% increase from \$138.3 million in 2016. For the nine months end[ing] March 31, 2017, the average FLS [(FedLoan Servicing)] servicing portfolio of loans was \$278.6 billion, a 15.0% increase from \$242.2 billion in 2016. For the nine months end[ing] March 31, 2017, the average number of total unique borrowers in the [Direct Loan] portfolio was 7.6 million, a 1.3% increase from 7.5 million in 2016.

PHEAA's Quarterly Financial Report for March 31, 2017 and 2016, at 18 *available at*,

<https://www.pheaa.org/about/pdf/financial-reports/quarterly/033117.pdf> (last visited August 4, 2017).

41. All of PHEAA's funds, including loan servicing revenues, "may be utilized at the discretion of the board of directors for carrying out any of the corporate purposes of the agency," and "...no obligation of the agency shall be a debt of the [Commonwealth of Pennsylvania]." 24 Pa. Stat. § 5104(3).

C. PHEAA's Servicing Responsibilities and Failures

42. PHEAA's duties as a federal student loan servicer include managing borrower accounts, collecting and processing borrowers' monthly payments, managing enrollment in IDR plans and providing services for the PSLF program and the TEACH Grant program. PHEAA is

responsible for collecting application paperwork, processing applications and communicating with borrowers to ensure that applications are complete.

i. PHEAA's Servicing Failures Have Deprived Borrowers of Qualifying Loan Forgiveness Months

43. PHEAA has failed to process borrowers' IDR applications timely and properly, thereby depriving borrowers of the opportunity to make qualifying monthly payments that count towards loan forgiveness. To accommodate its processing delays, PHEAA has put borrowers' accounts into forbearance status, which is not a qualifying repayment plan for loan forgiveness under PSLF or IDR plans.

44. For example, PHEAA significantly mishandled application processing for the REPAYE plan when it became available in December 2015. Its failure to process applications timely and properly resulted in a lengthy application processing backlog that delayed Massachusetts borrowers from staying on track with monthly payments that would count towards loan forgiveness.

45. These borrowers, who include public service employees and low-income borrowers, have therefore lost months that would otherwise count towards achieving loan forgiveness.

46. PHEAA's backlog in processing IDR applications following the REPAYE rollout has been widely reported: "Officials at the department say the majority of servicers are meeting or exceeding the target turnaround time of 15 days. However, FedLoan, which primarily handles borrowers seeking public service loan forgiveness, has a significant backlog . . ." Danielle Douglas-Gabriel, *Delays. Backlogs. Confusing applications. Obama's latest student loan plan is having growing pains*. Washington Post, Apr. 5, 2016, <https://www.washingtonpost.com/news/>

grade-point/wp/2016/04/05/delays-backlogs-confusing-applications-obamas-latest-student-loan-plan-is-having-growing-pains/?utm_term=.f858af50bdea

47. The Consumer Financial Protection Bureau (“CFPB”) reported on the complaints it received from borrowers relating to this backlog:

Over this reporting period, federal student loan borrowers submitted complaints when unable to enroll in an IDR plan several months after submitting an application. These borrowers reported processing delays and lost application documents, resulting in unnecessary forbearance and an inability to make qualified payments towards loan forgiveness. Some of these complaints suggest that servicing problems are preventing borrowers from making qualified payments in pursuit of Public Service Loan Forgiveness.

CFPB, *Annual Report of the Student Loan Ombudsman* (Oct. 2017),

https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/102016_cfpb_Transmittal_DFA_1035_Student_Loan_Ombudsman_Report.pdf.

48. When PHEAA causes borrowers to lose the opportunity to make qualifying payments towards loan forgiveness due to its own servicing failures, PHEAA does not remediate borrowers accounts to account for the lost months. Borrowers therefore bear the brunt of PHEAA’s servicing failures.

49. PHEAA is aware that its delays in processing IDR applications have caused borrowers to lose the opportunity to make qualifying monthly payments for loan forgiveness. In the last two years, PHEAA has received numerous complaints about processing delays and issues relating to PSLF. Nonetheless, PHEAA has not rectified the problem.

50. Borrowers also lose the opportunity to make qualifying monthly payments for loan forgiveness when PHEAA delays placing accounts in its system after borrowers’ loans are transferred to PHEAA for servicing.

51. In addition, despite having been awarded an exclusive contract to administer the PSLF program, PHEAA has failed to ensure that it is correctly calculating borrowers' qualifying payments.

52. As a result of its inadequate policies, PHEAA has miscounted borrowers' qualifying payments, thereby causing borrowers to lose qualifying payment months and erroneously prolonging borrowers' loan repayment obligations.

53. PHEAA has committed unfair and deceptive acts and practices in violation of M.G.L. c. 93A, § 2 and unfair acts in violation of 12 U.S.C. § 5531, by failing to process borrowers' IDR applications timely and properly, and by otherwise depriving borrowers of opportunities to make qualifying payments for the purposes of PSLF and IDR forgiveness.

54. Borrowers have been harmed and have suffered substantial injury as a result of PHEAA's conduct because they will be obligated to make payments on loans for longer than required and because the delay in obtaining loan forgiveness interferes with their short and long-term financial planning. For example, delay in loan forgiveness will cause borrowers' student loan balances to continue to appear as outstanding on credit reports, which interferes with borrowers' ability to qualify for other loans or lines of credit.

ii. PHEAA's Servicing Failures Have Caused TEACH Grants to be Converted into Loans

55. PHEAA has failed to process timely and properly teachers' annual certification forms and does not provide teachers sufficient time to resubmit or correct forms when additional information is required.

56. As a result, teachers who believe they have satisfied all of their logistical obligations associated with the paperwork for their TEACH Grants are unwittingly having their grants converted to loans.

57. PHEAA's failure to process TEACH Grant certification forms properly and timely forces upon teachers the financial burden of being required to pay back loans that they never intended to take on in the first instance.

58. PHEAA's failures are caused in part by PHEAA's use of inadequate servicing processes that do not provide teachers with a sufficient opportunity to supplement the information provided on their certification forms when additional information is necessary.

59. Time is of the essence with TEACH Grant certifications, as teachers are required to submit them each year. Therefore, PHEAA's delay in processing the certification forms caused teachers to run out of time to ensure their forms were complete.

60. Because of PHEAA's failure to process TEACH Grant certification forms properly and timely, many teachers are now required to repay loans that they never intended to borrow. As a result, these teachers are now struggling to manage their student debt.

iii. PHEAA Has Overcharged Hundreds of Massachusetts Borrowers

61. PHEAA's servicing failures go beyond IDR application processing and the PSLF program. PHEAA has overcharged hundreds of Massachusetts borrowers and collected tens of thousands of dollars in payments that were not due.

62. PHEAA's overcharges were caused by a defect in its servicing system, which had a billing system logic error that affected approximately 1% of PHEAA's borrower population nationwide. As PHEAA services loans for several million borrowers nationwide, the number of borrowers affected by PHEAA's overcharges is in the tens of thousands.

63. PHEAA is aware that these overcharges occurred as a result of a billing system logic error that caused PHEAA's servicing system to send erroneous and unnecessary bills to borrowers. PHEAA is also aware that many of the affected borrowers were experiencing

financial difficulties and had submitted applications to enter an IDR plan to obtain an affordable monthly payment obligation.

64. Despite being aware of its billing system logic error for nearly a year, PHEAA has failed to refund the overcharges, or even to notify borrowers of the overcharges. Rather, PHEAA has wrongfully held borrowers' money that it was not entitled to collect.

65. It is PHEAA's policy and practice to apply overcharges to interest or collection fees first when a student has overpaid because of PHEAA's servicing error.

66. PHEAA has committed unfair and deceptive acts and practices in violation of M.G.L. c. 93A and unfair acts and practices in violation of 12 U.S.C. § 5531 by overcharging student borrowers and failing to refund them.

67. Massachusetts student borrowers have suffered damages from PHEAA's conduct in the amount of the overcharges they paid.

V. CAUSES OF ACTION

COUNT I

Violation of Massachusetts General Laws c. 93A, § 2(a)

68. The Commonwealth incorporates paragraphs 1 through 67 of this Complaint.

69. The Attorney General brings this action pursuant to M.G.L. c. 93A, § 4.

70. PHEAA is a "person" within the meaning of M.G.L. c. 93A, § 1.

71. PHEAA is engaged in "trade or commerce" within the meaning of M.G.L. c. 93A, § 1.

72. PHEAA has engaged in unfair and deceptive acts and practices in violation of M.G.L. c. 93A, § 2(a), and regulations promulgated thereunder.

73. PHEAA's unfair and deceptive acts and practices include:

- a. Denying borrowers the opportunity to make qualifying payments for PSLF and IDR forgiveness when it failed to timely and properly process applications for IDR plans;
- b. Failing to properly count borrowers' PSLF qualifying payments;
- c. Failing to properly process TEACH Grant certification forms; and
- d. Collecting amounts not legitimately due and owing and failing to refund them.

74. In addition, PHEAA violated the Attorney General's Debt Collection Regulations, 940 C.M.R. 7.07(16), when it overcharged borrowers.

75. PHEAA knew or should have known it was committing unfair and deceptive acts and practices in violation of M.G.L. c. 93A, § 2(a).

76. Borrowers whose loans are serviced by PHEAA have suffered harm as a result of PHEAA's unfair and deceptive acts and practices, including making unnecessary loan payments and having their access to debt relief delayed through the loss of qualifying payment months under PSLF and IDR.

77. Pursuant to M.G.L. c. 93A, § 4, the Commonwealth provided the required notice to PHEAA at least five days before filing this action. The notice was provided to PHEAA on June 16, 2017.

COUNT II

Violation of the Consumer Financial Protection Act 12 U.S.C. § 5531

78. The Commonwealth incorporates paragraphs 1 through 77 of this Complaint.

79. The Attorney General brings this action pursuant to 12 U.S.C. § 5552(a)(1) and has timely provided written notice describing this action and a copy of the complete complaint to the Consumer Financial Protection Bureau, as required by 12 U.S.C. § 5552(b)(1)(A) and (b)(1)(C).

80. PHEAA offers a “consumer financial product or service,” and therefore is a “covered person” within the meaning of the CFPA. 12 U.S.C. §§ 5481(6), 5481(15)(A)(i).

81. The CFPA prohibits a covered person from committing or engaging in any “unfair, deceptive, or abusive act or practice” in connection with a transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service. 12 U.S.C. § 5531.

82. An act or practice is unfair within the meaning of the CFPA if it causes or is likely to cause substantial injury to consumers, which is not reasonably avoidable by consumers, and where such substantial injury is not outweighed by countervailing benefits to consumers or to competition. 12 U.S.C. § 5531(c).

83. PHEAA has engaged in unfair acts and practices by:

- a. Denying borrowers the opportunity to make qualifying payments for PSLF and IDR forgiveness when it failed to timely and properly process applications for IDR plans;
- b. Failing to properly count borrowers’ PSLF qualifying payments; and
- c. Collecting amounts not legitimately due and owing and failing to refund them.

84. PHEAA’s unfair acts and practices have caused substantial injury to Massachusetts borrowers by delaying borrowers’ access to debt relief under PSLF and IDR forgiveness and by causing borrowers to make unnecessary loan payments.

85. The substantial injury caused by these unfair acts and practices is not reasonably avoidable by borrowers. Borrowers are unable to affect PHEAA’s servicing practices or processing delays. When borrowers have requested that PHEAA remediate its servicing failures, PHEEA has failed to do so, thereby preventing borrowers from avoiding injury. Moreover, PHEEA is in a superior position to understand its servicing system and processing failures than

borrowers and many borrowers may not be aware that they have been harmed, preventing them from acting on their own behalves.

86. The substantial injury caused by PHEAA's unfair acts and practices is not outweighed by countervailing benefits, if any, to consumers or to competition. If there were benefits, they would not outweigh the substantial injury caused by PHEAA's collection of amounts not due and owing, its denial of opportunities for borrowers to make qualifying payments for PSLF or IDR forgiveness, or its failure to properly track and match qualifying PSLF payments.

87. As such, PHEAA's acts and practices, as set forth herein, constitute unfair acts or practices in violation of the CFPA. 12 U.S.C. §§ 5531, 5536(a).

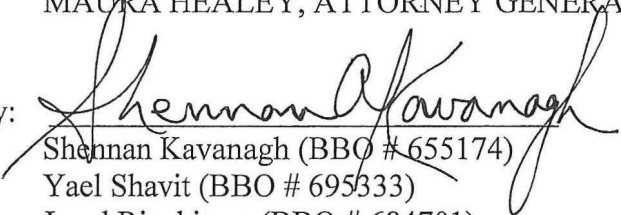
VI. PRAYER FOR RELIEF

WHEREFORE, the Commonwealth requests that this Court enter judgment and grant the following relief after trial on the merits:

1. Award restitution to borrowers injured by PHEAA's unfair or deceptive acts and practices;
2. Award civil penalties;
3. Award attorneys' fees and costs;
4. Enter a permanent injunction preventing PHEAA from:
 - a. Denying borrowers the opportunity to make qualifying payments for PSLF and IDR forgiveness purposes;
 - b. Preventing teachers from retaining TEACH Grants; and
 - c. Retaining overcharges and applying overcharges to interest and fees rather than to principal balances, unless directed to do so by borrowers.
5. Grant such other relief as permitted by law and that the Court deems appropriate.

COMMONWEALTH OF MASSACHUSETTS
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