

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION**

**BUREAU OF CONSUMER )  
FINANCIAL PROTECTION, )**

**Plaintiff, )**

**v. )**

**PEAKS Trust 2009-1; Deutsche )  
Bank National Trust Company, )  
solely in its capacity as lender )  
trustee of the PEAKS Trust 2009-1; )**

**Case No. 1:20-CV-2386**

**Deutsche Bank Trust Company )  
Delaware, solely in its capacity as )  
owner trustee of PEAKS Trust )  
2009-1; Deutsche Bank Trust )  
Company Americas, solely in its )  
capacity as indenture trustee and )  
collateral agent; )**

**Defendants. )**

---

**COMPLAINT**

The Bureau of Consumer Financial Protection (the “Bureau”) alleges the following against PEAKS Trust 2009-1, Deutsche Bank National Trust Company (“DBNTC”), solely in its capacity as lender trustee of PEAKS, Deutsche Bank Trust Company Delaware (“DBTCD”), solely in its capacity as owner trustee of PEAKS, and Deutsche Bank Trust Company Americas (“DBTCA”), solely in its

capacity as indenture trustee and collateral agent of PEAKS (collectively “PEAKS” or “Defendants”):

## **INTRODUCTION**

1. The Bureau brings this action under sections 1031(a), 1036(a), 1054(a), and 1055 of the Consumer Financial Protection Act of 2010 (“CFPA”), 12 U.S.C. §§ 5531(a), 5536(a), 5564(a), 5565, based on PEAKS’s violations of section 1036(a)(3) of the CFPA, 12 U.S.C. § 5536(a)(3), which prohibits providing substantial assistance to a covered person or service provider engaging in unfair, deceptive, or abusive acts and practices.

2. PEAKS Trust 2009-1 is a special purpose entity created in 2009 to purchase, own, and manage certain private student loans (“PEAKS Loans”) offered to students enrolled at an ITT Technical Institute run by ITT Educational Services, Inc. (“ITT”), with DBNTC, DBTCD, and DBTCA serving as trustee entities in a variety of roles to effectuate the PEAKS loan program under the terms of the program agreements that established the PEAKS Trust 2009-1.

3. ITT was a publicly traded, for-profit corporation, which enrolled consumers in classes at 149 locations throughout the country until September 2016, when it ceased all operations and filed for bankruptcy protection.

4. The PEAKS loan program originated approximately \$350 million in student loans to ITT students. PEAKS Loans were available only to ITT students.

They were disbursed directly to ITT and proceeds were required to be used only to pay ITT and could not be used by students for any other purposes.

5. Funding for the PEAKS Loans was provided primarily by PEAKS through an automatic purchase agreement with a bank that originated the PEAKS Loans. PEAKS continues to hold the outstanding loans, and contracts for servicing and collections through a third-party servicer.

6. For the duration of the PEAKS loan program, ITT offered a similar private loan program operated by the Student CU Connect CUSO, LLC (CUSO) (together with the PEAKS Loans, the “ITT Private Loan Programs” or the “ITT Private Loans”).

7. In February 2014, the Bureau sued ITT in federal district court, alleging that ITT had engaged in unfair and abusive acts and practices in connection with the ITT Private Loan Programs and violated the Truth in Lending Act.

8. Among other things, the Bureau alleged that ITT unfairly pushed students into ITT Private Loans, which caused consumers substantial injuries that were not reasonably avoidable and were not outweighed by benefits to consumers or competition.

9. Following its oversight and participation in the loan origination process prior to July 21, 2011, PEAKS has provided substantial assistance to ITT

in operating the PEAKS loan program by directing the servicing and collection of the loans.

10. PEAKS knew, or was reckless in not knowing, the risks and problems associated with the PEAKS loan program. In particular, PEAKS knew, as of at least June 2012, if not earlier, that the majority of borrowers were likely to default on their loans and knew or was reckless in not knowing that, because of ITT's financial aid practices, many students were pushed into PEAKS Loans, did not understand the terms of their PEAKS Loans, or did not realize they had taken out loans at all. Despite these red flags, PEAKS continued the PEAKS loan program, servicing and collecting on the loans, ensuring that ITT students faced the harmful consequences of the high cost debt.

11. Over 35,000 former ITT students currently owe outstanding balances on their PEAKS Loans. The current balance of the PEAKS Loans, including principal, outstanding interest, and outstanding fees, is approximately \$330 million.

### **JURISDICTION AND VENUE**

12. This Court has subject matter jurisdiction over this action because it concerns federal consumer financial law, 12 U.S.C. § 5565(a)(1), presents a federal question, 28 U.S.C. § 1331, and is brought by an agency of the United States, 28 U.S.C. § 1345.

13. Venue is proper in this district because the Defendants conduct business in the Southern District of Indiana. 12 U.S.C. § 5564(f).

## **PARTIES**

### **Plaintiff**

14. The Bureau is an independent agency of the United States charged with regulating the offering and provision of consumer financial products and services under federal consumer financial laws. It has independent litigating authority. 12 U.S.C. § 5564(a)-(b).

### **Defendants**

15. PEAKS Trust 2009-1 is a Delaware statutory trust created in 2009 for the specific purpose of purchasing, owning, and managing private student loans offered to ITT students.

16. At least from July 21, 2011 through the present, PEAKS Trust 2009-1 engaged in servicing loans and collecting debt through the PEAKS loan program.

17. DBNTC is a non-depository national banking association. As lender trustee of PEAKS Trust 2009-1, DBNTC holds legal and record title to the PEAKS Loans on behalf of and for the benefit of PEAKS Trust 2009-1.

18. At least from July 21, 2011 through the present, DBNTC served as an agent for PEAKS Trust 2009-1.

19. DBTCD is a Delaware banking corporation and an affiliate of

DBTCA. As owner trustee of PEAKS Trust 2009-1, DBTCD executes contracts and maintains agreements on behalf of PEAKS Trust 2009-1.

20. At least from July 21, 2011 through the present, DBTCD served as an agent for PEAKS Trust 2009-1.

21. DBTCA is a New York banking corporation with total assets in excess of \$10 billion. As indenture trustee and collateral agent for the PEAKS Trust 2009-1, DBTCA entered into and is a party to the servicing agreements for the PEAKS Loans.

22. At least from July 21, 2011 through the present, DBTCA served as an agent for PEAKS Trust 2009-1.

## **FACTUAL ALLEGATIONS**

### **ITT's Temporary Credit Program**

23. ITT's revenues came from student tuition and fees. The primary method by which students paid their ITT tuition and fees, and the main source of ITT's cash receipts, were loans and grants provided to students by the federal government under Title IV of the Higher Education Act of 1965, 20 U.S.C. §§ 1070 *et seq.* ("Title IV loans and grants").

24. In 2011, about 89% of ITT's cash receipts came from Title IV loans and Title IV, state, and Department of Veterans Affairs grants, and around 7% came from private loans, such as the PEAKS Loans.

25. Beginning in or about 2008, ITT began offering its students loans that it called Temporary Credit to cover the difference between the amount they could obtain in Title IV loans and grants and the cost of attending ITT. ITT's Temporary Credit was a no-interest loan payable in a single lump sum payment, with a due date typically nine months after enrollment at the end of the academic year for which it was offered.

26. Temporary Credit was offered and provided by ITT during rushed financial aid appointments controlled by Financial Aid staff who frequently provided students with incomplete or inaccurate information about these loans. As a result, some students who had Temporary Credit loan obligations did not know they had received Temporary Credit, did not know the terms of the loans, or did not even know that Temporary Credit were loans that would have to be repaid. ITT's own financial aid training materials noted that students were not a "reliable source" as to whether they had ever received Temporary Credit.

27. ITT had detailed information about students' credit histories and financial resources and knew that the vast majority of students who received Temporary Credit did not and would not have the resources or access to credit to make the lump sum payments when they came due.

### **The ITT Private Loan Programs**

28. In 2008, the same year ITT began offering Temporary Credit, it

began to build two private loan programs from scratch, later called the PEAKS and CUSO loan programs.

29. ITT disclosed to its auditors and its investors that the ITT Private Loan Programs were specifically intended, and would be used, to reduce the amount of Temporary Credit outstanding on its books and to help ITT avoid lending students any further amounts after their first year. As noted by ITT's former Chief Financial Officer, the refinancing of Temporary Credit through the ITT Private Loan Programs "was our plan all along."

30. Indeed, ITT's Temporary Credit program operated as a tool to pre-qualify students for the PEAKS loan program regardless of their credit profile. Pursuant to the written underwriting criteria for the PEAKS loan program, a continuing ITT student who had received Temporary Credit was automatically eligible for a PEAKS Loan so long as he or she had not declared bankruptcy within 24 months ("Temporary Credit Exception"). PEAKS accepted these underwriting criteria, including the Temporary Credit Exception.

### **ITT's Financial Aid Practices**

31. ITT students obtained PEAKS Loans through an application process controlled by ITT's Financial Aid staff. ITT made a practice of having its Financial Aid staff take control of the students' loan applications and rush them through the process of signing up for loans, leaving many unsure what they were



signing or the terms and conditions of the financial products.

32. ITT provided its Financial Aid staff with software called “SmartForms,” which automatically populated and submitted financial aid applications for its students to the federal government or other lenders, requiring only e-signatures from students.

33. The financial aid appointments for continuing students were called “repackaging” or “repack” appointments. In order to ensure that continuing students (including graduating students) came to the repack appointments, which often occurred months in advance of the applicable academic term, ITT instructed and incentivized its Financial Aid staff to use aggressive tactics such as calling students at home, finding them in the bookstore or the library or the student lounge, pulling them from class, barring them from class, enlisting the aid of other ITT staff (including instructors), and withholding course materials, diplomas, and transcripts. In some instances, Financial Aid managers placed notes in staff reports indicating that students “must apply for PEAKS” at their next Financial Aid appointment.

34. In other instances, Financial Aid staff were able to gain unauthorized access to student SmartForms accounts and complete the repack process, including e-signing loan documents, without the knowledge or participation of students. ITT’s headquarters had to remind Financial Aid staff that they were not allowed to

take over the PEAKS application process, including admonishing staff that they were not to create and electronically sign PEAKS loan documents on behalf of students.

35. In 2009, the PEAKS loan program began offering private loans, and Financial Aid staff began pushing students, using the repackaging tactics described above, into refinancing their Temporary Credit with PEAKS Loans. Some students objected to the ITT Private Loans, but they were told by ITT that if they refused to use them they either had to pay any outstanding Temporary Credit and the next year's tuition gap—which most could not do—or leave the school in the middle of their program and forfeit the investment they had made while still being left with federal student loan debt.

36. Some ITT students did not even realize they took out the ITT Private Loans. For some students, this was because of the rushed and automated manner in which ITT Financial Aid staff processed their paperwork. For other students, this was because of flaws in the loan origination process and the SmartForms system which allowed ITT Financial Aid staff unauthorized access to student loan applications and promissory notes.

### **The PEAKS Loans' High Interest Rates and High Default Rates**

37. The interest rate for the PEAKS Loans, which carried a ten-year term, was based on a student's credit score. For borrowers with credit scores under 600,

the interest rate initially went as high as the prime rate plus 11.5%, with an origination fee as high as 10%. Starting in February 2011, borrowers with credit scores under 600 were charged an interest rate of prime plus 12.5%, in addition to the 10% origination fee. Since the loans were made, the prime rate has been 3.25% to 5.5%; thus the effective interest rate for borrowers with credit scores under 600 has been 14.75% to 18%. Approximately 47% of the PEAKS borrowers had credit scores under 600, and thus were subject to the highest interest rates and origination fees.

38. PEAKS Loans carry a high monthly payment, with higher interest rates, more rigid conditions, and fewer options to reduce monthly payments than federal student loans offer. For most former ITT students, this monthly payment, on top of all other loan obligations, is unaffordable.

39. ITT knew that many students ultimately placed into ITT Private Loans were likely to default. According to models constructed by ITT and the administrators of the CUSO loan program based on the historic performance of private student loans provided to ITT students, 30% of ITT students were projected to default on their loans. For ITT students with credit scores below 600, the projected rate was 58.9%. Prior to the inception of its loan program, PEAKS estimated that 45.8% of loan recipients would have a credit score below 600.

40. Defaults on PEAKS Loans exceeded ITT's predictions. By 2013, ITT

projected defaults across the PEAKS portfolio to reach 49.4% to 55.4%.

41. Soon after the loans entered repayment, ITT took steps to temporarily reduce the number of defaults. A key feature of the PEAKS loan program was a guarantee agreement with ITT. When loan defaults caused the asset/liability ratio in the trust to fall below certain thresholds, ITT was obligated to make payments to PEAKS. This ensured PEAKS investors received full payments of the amounts due on their investments. From October 2012 until early 2014, ITT made “Payments on Behalf of Borrowers” (POBOBS)—direct payments on students’ loan accounts—to prevent PEAKS loans from defaulting and thereby defer ITT’s financial obligations related to the loans under the guarantee agreement. These payments were undisclosed to PEAKS, student loan borrowers, and ITT’s investors until September 2013. Without the POBOBS, the early years of the PEAKS program would have demonstrated more clearly the eventual scale of default, which is now approximately 80%. An agreement between PEAKS and ITT ended the POBOB program in March 2014.

42. In June 2012, PEAKS’s servicer stated, “Based on the portfolio performance, it would not be surprising if 70% or more of loan balances ultimately default.”

43. In September 2016, ITT filed for bankruptcy protection and ceased all operations.

44. Approximately 80% of PEAKS loans have defaulted.

45. As a consequence, these former ITT students have had their defaults, delinquencies, and negative payment histories reported to consumer reporting agencies.

### **PEAKS's Crucial and Ongoing Role in ITT's Private Loan Program**

46. PEAKS facilitated the PEAKS loan program by helping ITT recruit investors for the program, by immediately purchasing the PEAKS Loans from the originating entity, by participating in setting the interest rates and terms of the loans, by distributing payments from students and ITT to investors, and by conducting the management and oversight of loan servicing and collection activities, which continues through the present day.

47. PEAKS knew that the purpose of the PEAKS loan program was to convert Temporary Credit into revenue for ITT. PEAKS knew that many of the borrowers consisted of students who held Temporary Credit issued by ITT and were repack-eligible, but who did not have the resources or the access to credit to be able to repay the loans.

48. PEAKS was also on notice about ITT's financial aid practices: during the period when the PEAKS loan program was actively making loans, numerous students lodged complaints with the PEAKS Loan origination agent and the program's servicer claiming that they did not realize they had taken out loans, were

not aware of the terms of the loans, were not aware that the loans were not federal student loans, and that ITT Financial Aid employees had used high pressure tactics during their financial aid appointments. Additionally, students lodged complaints that Financial Aid staff had signed PEAKS Loan applications and promissory notes without the students' knowledge or authorization.

49. But PEAKS had reason to continue with the loan program because ITT, through an "out-of-the-money" corporate guarantee agreement, guaranteed the PEAKS investors' returns. ITT unconditionally guaranteed payment of the investors' and program participants' fees, principal, and interest "as and when due." When the asset-to-liability ratio in the trust fell below certain thresholds, ITT was required to make payments to PEAKS. This guarantee incentivized PEAKS to make available and service the loans.

50. The guarantee agreement allowed ITT to continue to exert control over the PEAKS loan program after origination of the loans. The governing documents of the PEAKS loan program, including the guarantee agreement, gave ITT certain servicing rights, and guarantee payments were only made if PEAKS continued to actively collect the loans.

51. Despite the significant default predictions, actual defaults that exceeded projections, ITT's efforts to manipulate the default rate of the loans, knowledge of numerous consumer complaints, and the Bureau's lawsuit against

ITT alleging unlawful practices related to the ITT Private Loan Programs, PEAKS continued servicing and collecting PEAKS Loans in accordance with the loan program agreement with ITT.

## COUNT I

### **Providing Substantial Assistance to ITT's Unfair Conduct**

52. The allegations in paragraphs 1-50 are incorporated here by reference.

53. Under the CFPA, it is unlawful for any person to “knowingly or recklessly provide substantial assistance to a covered person or service provider in violation of the provisions of section 1031, or any rule or order issued thereunder.” 12 U.S.C. § 5536(a)(3).

54. ITT is a covered person and a service provider under the CFPA because it has engaged in offering or providing consumer financial products or services and has provided a material service to a covered person in connection with the offering or provision by such covered person of a consumer financial product or service, including extending credit, servicing loans, and collecting consumer debts. 12 U.S.C. § 5481(6), (15)(A)(i), (15)(A)(x), (26).

55. The PEAKS Loans are consumer financial products. Servicing and collecting the PEAKS Loans are consumer financial services. 12 U.S.C. § 5481(5), (15)(A)(i), (15)(A)(x).

56. An act or practice is unfair under the CFPA where “(A) the act or

practice causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers; and (B) such substantial injury is not outweighed by countervailing benefits to consumers or competition.” 12 U.S.C. § 5531(c)(1).

57. Since at least July 21, 2011, ITT, through its agents, caused the collection of high-cost, high-risk PEAKS Loans, with the knowledge that consumers were subjected to undue influence or were coerced into taking out the loans through a variety of unfair acts and practices, including pulling students out of class, rushing students through financial aid packaging appointments, and using no interest, short-term Temporary Credit to meet initial funding gaps without disclosing the future refinancing scheme involving this credit.

58. These acts and practices have caused substantial injury to consumers. As a result of ITT’s actions, thousands of consumers have been subjected to continued collections on PEAKS Loans that they could not afford, did not want, did not understand, or did not even know they had. PEAKS Loans are high-fee, high-interest rate, ten-year loans, with expected high default rates, more rigid conditions and fewer options to reduce monthly payments than federal loans, and are not dischargeable in bankruptcy without a special showing of undue hardship. ITT never informed students that it anticipated that a majority of students that received the loans would default, leaving students without the ability to anticipate



the impending harm of the PEAKS Loans. The significant majority of students who took out PEAKS Loans have defaulted on those loans.

59. The injury to consumers caused by ITT's unfair practices to consumers that took out the high-fee, high-interest rate, high expected—and realized—default rate PEAKS Loans was not outweighed by countervailing benefits to consumers or to competition.

60. Therefore, ITT violated the CFPA by engaging in unfair practices, 12 U.S.C. § 5536(a)(1)(B), as defined in 12 U.S.C. § 5531(c)(1).

61. Since July 21, 2011, PEAKS has provided substantial assistance to the unlawful conduct of ITT by actively servicing and managing the loan portfolio, including collection of the loans.

62. When PEAKS provided this substantial assistance, it knew, or was reckless in not knowing, that student borrowers, as part of ITT's business strategy underlying the PEAKS loan program, had been pushed from the initial no-interest Temporary Credits offered by ITT into the PEAKS Loans; that ITT's financial aid practices left many students unaware of the terms, conditions, risks, or even existence of their PEAKS Loans; and that students were defaulting on their loans at significantly high rates.

63. Therefore, PEAKS has provided substantial assistance to the unlawful conduct of ITT, in violation of 12 U.S.C. § 5536(a)(3).

## DEMAND FOR RELIEF

The Bureau requests that the Court award:

1. Equitable relief against Defendants;
2. Restitution to affected consumers against Defendants;
3. Injunctive relief against Defendants;
4. Disgorgement against Defendants;
5. Rescission against Defendants;
6. Civil Money Penalties against Defendants;
7. Plaintiff's costs against Defendants; and
8. Additional relief as the Court may determine to be just and proper.

Dated: September 15, 2020

Respectfully submitted,

Thomas G. Ward (DC Bar #462158)  
*Enforcement Director*

David Rubenstein (DC Bar #458770)  
*Deputy Enforcement Director*

Cynthia Gooen Lesser (NY Bar #2578045)  
*Assistant Deputy Enforcement Director*

s/ Jonathan Reischl  
Jonathan Reischl (IL Bar # 6305260)  
Manuel Arreaza (DC Bar#1015283)

Maureen McOwen (DC Bar #976749)  
*Enforcement Attorneys*

Bureau of Consumer Financial Protection

1700 G Street, NW

Washington, DC 20552

Telephone: (202) 435-9202

Facsimile: (202) 435-7722

e-mail: [jonathan.reischl@cfpb.gov](mailto:jonathan.reischl@cfpb.gov)

*Attorneys for Bureau of Consumer Financial  
Protection*