UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

BUREAU OF CONSUMER FINANCIAL PROTECTION, **Plaintiff,** **v.** **STUDENT CU CONNECT CUSO, LLC,** **Defendant.**	)	**Case No. 1:19-CV-2397**

COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES

The Bureau of Consumer Financial Protection (the "Bureau") alleges the following against Student CU Connect CUSO, LLC ("CUSO" or "Defendant"):

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 Defendant'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. The CUSO is a special purpose entity created in 2008 to fund,

purchase, manage, and hold certain private student loans ("CUSO Loans") offered to students enrolled at an ITT Technical Institute run by ITT Educational Services, Inc. ("ITT").

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 CUSO Loan program originated approximately $189 million in student loans to ITT students. CUSO 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 CUSO Loans was provided primarily by the CUSO through an automatic purchase agreement with a credit union that originated the CUSO Loans. The CUSO continues to hold the outstanding loans, and contracts for servicing and collections through a third-party servicer.

6. 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 CUSO Loans and violated the Truth in Lending Act.

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

competition.

8. The CUSO provided substantial assistance to ITT in operating the loan program. The CUSO helped to create the CUSO Loan program, raised money for the CUSO Loan program, ratified the loan criteria, and oversaw the origination and servicing of the loans.

9. The CUSO knew, or was reckless in not knowing, the risks and problems associated with the CUSO Loan program. In particular, the CUSO knew, at least as of August 2010, 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 the CUSO Loans, did not understand the terms of their CUSO Loans, or did not realize they had taken out loans at all. Despite these red flags, the CUSO participated in the CUSO Loan program, ensuring that ITT students faced the harmful consequences of the high cost debt.

JURISDICTION AND VENUE

10. 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.

11. Venue is proper in this district because a substantial part of the events

giving rise to the claims occurred in, and the Defendant does business in, the Southern District of Indiana. 12 U.S.C. § 5564(f).

PARTIES

Plaintiff

12. 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. 12 U.S.C. § 5491(a). It has independent litigating authority. 12 U.S.C. § 5564(a)-(b).

Defendant

13. The CUSO is a Delaware limited liability company created in 2008 for the specific purpose of funding, purchasing, holding, and managing private student loans offered to ITT students.

14. At least from July 21, 2011 through the present, the CUSO engaged in providing "consumer financial products or services" pursuant to the CFPA, 12 U.S.C. § 5481(5), (15)(A)(i), by extending credit and servicing loans through the CUSO Loan program.

FACTUAL ALLEGATIONS

ITT's Temporary Credit Program

15. 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").

16. In 2011, about 89% of ITT's cash receipts came from Title IV loans and grants, and around 7% came from private loans, such as the CUSO Loans.

17. 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.

18. 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 they 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.

19. 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

20. In 2008, the same year ITT began offering Temporary Credit, it began to build two private loan programs from scratch, later called the CUSO and PEAKS loan programs (together, the "ITT Private Loan Programs" or the "ITT Private Loans").

21. 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 the plan all along." Likewise, the CUSO's offering materials noted that the CUSO Loan program was a means for ITT to shift its student lending from Temporary Credits to a "private student lending solution."

22. Indeed, ITT's Temporary Credit program operated as a tool to pre-qualify students for the CUSO Loan program regardless of their credit profile. Pursuant to the written underwriting criteria for the CUSO Loan program, a continuing ITT student who had received Temporary Credit was automatically

eligible for a CUSO Loan so long as he or she had not declared bankruptcy within 24 months ("Temporary Credit Exception"). The CUSO accepted these underwriting criteria, including the Temporary Credit Exception.

23. Approximately $149 million, or 79% of the entire CUSO Loan portfolio, went to students who qualified under the Temporary Credit Exception.

ITT's Financial Aid Practices

24. ITT students obtained CUSO 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.

25. 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.

26. 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.

27. 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.

28. In 2009, the CUSO 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 CUSO 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 saddled with federal student loan debt.

29. 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.

CUSO Loans Featured High Interest Rates and High Default Rates

30. The interest rate for the CUSO 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 10.5%, with an origination fee as high as 10%. Starting in or around April 2011, borrowers with credit scores under 600 were charged an interest rate of prime plus 13%, in addition to the 10% origination fee. For most of the period since the loans were made, the prime rate has been 3.25%; thus the effective interest rate for borrowers with credit scores under 600 has been 13.75% or 16.25%. Approximately 46% of the CUSO borrowers had credit scores under 600, and thus were subject to interest rates of 13.75% or 16.25% and origination fees of 10%. Recent increases in the prime rate have increased the interest rates of the CUSO Loans, further impacting borrowers.

31. In May 2011, ITT's consultant for loan default analysis projected a gross default rate of 61.3% for the existing CUSO Loans. Despite clear indications that the vast majority of students would be unable to afford the CUSO Loans, ITT and the CUSO continued the CUSO Loan program.

32. The CUSO Loans carry a high monthly payment, with higher interest rates, more rigid conditions, and fewer options to reduce monthly payments than

federal loans offer. For most former ITT students, this monthly payment, on top of all other loan obligations, is unaffordable.

33. Former ITT students, having been pushed by ITT into the high-cost, high-risk CUSO Loans, subsequently defaulted in large numbers, as predicted by ITT and the CUSO. As a consequence, former ITT students have had their defaults, delinquencies, and negative payment histories reported to consumer reporting agencies.

34. In September 2016, ITT filed for bankruptcy protection and ceased all operations. In a filing in bankruptcy court in January 2017, the CUSO projected a gross cumulative default rate of 94% for the CUSO Loans.

The CUSO Was a Crucial Participant in ITT's Loan Program

35. The CUSO facilitated the CUSO Loan program by helping ITT recruit investors for the program, by immediately purchasing the CUSO Loans from the originating entity, by participating in the management and oversight of loan servicing activities, by participating in setting the interest rates and terms of the loans, and by distributing payments from students and ITT to investors.

36. The CUSO knew that the purpose of the CUSO Loan program was to convert Temporary Credit into revenue for ITT. The CUSO knew that the primary source of 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.

37. Prior to the inception of the CUSO Loan program, the architects of the program knew that many students ultimately placed into CUSO Loans were likely to default. According to models constructed by ITT and the CUSO prior to the beginning of the CUSO Loan program, 30% of the debt was projected to default. For the largest category of ITT students, those with credit scores below 600, the projected rate was 58.9%.

38. Despite these significant default predictions, the CUSO proceeded with the loan program. It did so in part because ITT, through a risk share agreement, guaranteed the program's performance above certain loss thresholds. When charge-offs exceeded those thresholds, ITT was required to make a series of payments to the CUSO, which incentivized the CUSO to continue to make available and service the loans.

39. At approximately the mid-point of the loan program, the CUSO became aware that the projected default rate of the CUSO Loan portfolio would be much higher than anticipated, due to the use of Temporary Credit as a pre-qualifying tool for CUSO loan eligibility. Despite this, and other, early indications that the CUSO Loan program would have a much higher default rate, the CUSO continued to make the loans available to consumers through the end of 2011, the duration of the loan program agreement with ITT.

40. During the period when the CUSO Loan program was actively making loans, numerous students lodged complaints with the CUSO 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 loans, and that ITT Financial Aid employees had used high pressure tactics during their financial aid appointments. Despite knowledge of numerous consumer complaints, the CUSO continued funding, servicing, and collecting CUSO Loans in accordance with the loan program agreement with ITT.

COUNT I

Providing Substantial Assistance to ITT's Unfair Conduct

41. The allegations in paragraphs 1-X are incorporated here by reference.

42. 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).

43. ITT is a covered person and a service provider under the CFPA. 12 U.S.C. § 5481(6), (26).

44. The CUSO Loans are consumer financial products. Offering, providing, and brokering the CUSO Loans and offering and providing financial advisory services are consumer financial services. 12 U.S.C. § 5481(5), (15)(A)(i),

(15)(A)(viii).

45. 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).

46. ITT subjected consumers to undue influence or coerced them into taking out high cost, high risk CUSO 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, designed to interfere with the consumers' ability to make informed, uncoerced choices.

47. These acts and practices have caused substantial injury to consumers. As a result of being pressured into doing so by ITT, approximately 8,600 consumers entered into high risk CUSO Loans that they could not afford, did not want, did not understand, or did not even know they had. CUSO Loans were high-fee, high-interest rate, ten-year loans, with expected high default rates, which have more rigid conditions and fewer options to reduce monthly payments than federal loans, and which 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 CUSO Loans. The significant majority of students who took out the CUSO Loans have defaulted on or are expected to default on those loans.

48. 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 CUSO Loans was not outweighed by countervailing benefits to consumers or to competition.

49. 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).

50. The CUSO provided substantial assistance to the unlawful conduct of ITT by its active involvement in the creation of the CUSO Loan program, by facilitating access to capital for the loans, by overseeing the loan originations, and by actively servicing and managing the loan portfolio.

51. When the CUSO provided this substantial assistance, it knew, or was reckless in not knowing, that student borrowers, as part of ITT's business strategy underlying the CUSO Loan program, were being pushed from the initial no-interest Temporary Credits offered by ITT into the CUSO Loans; that ITT's financial aid practices left many students unaware of the terms, conditions, risks, or

even existence of their CUSO Loans; and that students were defaulting on their loans at significantly high rates.

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

Dated: June 14, 2019

Respectfully submitted,

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