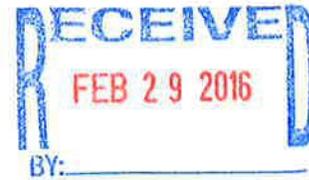


February 26, 2016

Anthony S. Bieda
Vice President for External Affairs
Accrediting Council for Independent Colleges and Schools
750 First Street, NE, Suite 980
Washington, DC 20002-4223



Dear Mr. Bieda:

I am in receipt of your letter dated January 8, 2016, requesting information regarding a variety of financial and regulatory matters. I appreciate the opportunity to respond to these issues. Pursuant to your request, I am providing summary information and the current status for each item cited.

(1) Certain students were assigned textbooks with typos and other quality issues.

Consistent with our Mission, the ITT Technical Institutes are committed to providing quality, career-related educational programs that integrate lifelong learning with knowledge and skills to help students:

- Pursue their personal interests and objectives;
- Develop intellectual, analytical and critical thinking abilities; and
- Provide service to their communities.

As part of this commitment, our administration and faculty regularly review and assess the quality of instruction provided to our students. This includes ensuring compliance with Section 3-1-531 and 3-1-532 of the *Accreditation Criteria*. As a result, our institutions provide appropriate Instructional Tools and employ appropriate Instructional Components with the educational environment.

Without specific information about particular textbooks which may have typographical errors, I am limited in my ability to conduct any further inquiry. However, as a general practice, all instructional materials are routinely monitored for any inaccuracy or inconsistency, and such instances are promptly remediated.

(2) Certain students were not required to attend or participate in class.

Our attendance requirements for all students are clearly set forth in the student catalog, and provide as follows:

Attendance Requirements

Each student is required to regularly attend each course that the student is registered to take in the program in which the student is enrolled. For residence courses, attendance means (a) physical participation in the class meetings and other activities of the course; and (b) other positive academic participation by the student, as approved by the school, such as attending a class meeting in a different class section of the same course or completing and submitting coursework. For online courses, attendance means logging into the course website and engaging in at least one of the following activities:

- submitting a course assignment;
- participation in a course discussion thread by posting a comment, question or response related to a course topic;
- an email communication with an instructor related to a course topic, such as the submission of an "Ask the Instructor" question in the learning management system; or
- taking a quiz or exam.

Students attending online courses are required to follow the protocols specified by the school to record the student's attendance in the class communications and activities that are part of the course. Any failure by a student attending an online course to follow the protocols specified by the school to record the student's attendance in a class communication or activity that is part of the course may, as determined by the school, result in the school identifying the student as absent from or a non-participant in the class communication or other activity of the course.

As required by federal law, each student must annually participate in the programs presented by the school that address the following subjects: (a) promoting the awareness of rape, acquaintance rape and other forcible and nonforcible sex offenses (20 U.S.C. 1099c); (b) preventing the use of illicit drugs and the abuse of alcohol by students (20 U.S.C. 1145g); and (c) any other subject that the federal government may, from time to time, require the school to present to its students. If a student fails to participate in any of the above programs and execute any documentation confirming his or her participation that the school may require, the school may, in its discretion, suspend and/or terminate the student from his or her program of study at the school.

Our institutions maintain accurate records of student attendance, as tracking attendance is relevant to a number of core institutional functions, such as properly measuring satisfactory progress and ensuring student refunds are calculated consistent with our published refund policy (see, e.g., *Accreditation Criteria* Sections 3-1-420 and 3-1-433, respectively).

Student participation is at the discretion of each individual student. However, where participation is designated as a component of the grading rubric for a course, individuals students who do not participate in class would be at a disadvantage in receiving credit compared to their peers who would actively participate.

(3) Certain students were unable to transfer class credits to other accredited institutions.

Every postsecondary educational institution is responsible for ensuring that it has a process for evaluating and considering how to award proper academic credit for credits earned at institutions accredited by agencies recognized by the United State Department of Education (*Accreditation Criteria* Section 3-1-413). However, there is nothing that our institutions can do that will force other postsecondary educational institutions to accept our credits – credits that are awarded by institutions properly approved by one or more qualified state education agency and an accrediting agency. Our institutions do have articulation agreements with certain institutions, and these agreements are disclosed to current and prospective students on our website at <https://www.itt-tech.edu/articulation/>.

Recognizing that other accredited postsecondary educational institutions may not accept our credits, all prospective students are informed of the following disclosure:

Transfer of Credit

Credits earned in any course taken at the school will be accepted for transfer by any other ITT Technical Institute located outside of Maryland toward the credits required in the same course, if that course is offered by the other ITT Technical Institute. Any ITT Technical Institute located in Maryland will accept for transfer toward the credits required in the same course any credits earned in any (a) 100- or 200-level course at any other ITT Technical Institute that is only authorized to award associate degrees, and (b) course at any other ITT Technical Institute that is authorized to award bachelor degrees.

DECISIONS CONCERNING THE ACCEPTANCE OF CREDITS EARNED IN ANY COURSE TAKEN AT THE SCHOOL ARE MADE AT THE DISCRETION OF THE RECEIVING INSTITUTION. THE SCHOOL MAKES NO REPRESENTATION WHATSOEVER CONCERNING THE TRANSFERABILITY OF ANY CREDITS EARNED AT THE SCHOOL TO ANY INSTITUTION OTHER THAN AN ITT TECHNICAL INSTITUTE AS SPECIFIED ABOVE. IT IS UNLIKELY THAT ANY CREDITS EARNED AT AN ITT TECHNICAL INSTITUTE WILL BE TRANSFERABLE TO OR ACCEPTED BY ANY INSTITUTION OTHER THAN AN ITT TECHNICAL INSTITUTE.

ANY STUDENT CONSIDERING CONTINUING HIS OR HER EDUCATION AT, OR TRANSFERRING TO, ANY INSTITUTION OTHER THAN AN ITT TECHNICAL INSTITUTE MUST NOT ASSUME THAT ANY CREDITS EARNED IN ANY COURSE TAKEN AT THE SCHOOL WILL BE ACCEPTED BY THE RECEIVING INSTITUTION. AN INSTITUTION'S ACCREDITATION DOES NOT GUARANTEE THAT CREDITS EARNED AT THAT INSTITUTION WILL BE ACCEPTED FOR TRANSFER BY ANY OTHER INSTITUTION. THE STUDENT MUST CONTACT THE REGISTRAR OF THE RECEIVING INSTITUTION TO DETERMINE WHAT CREDITS EARNED AT THE SCHOOL, IF ANY, THAT INSTITUTION WILL ACCEPT.

The often limited ability or inability to transfer class credits from one accredited institution to another institution is a well-discussed and much-debated issue. However, as the discretion whether to award credit for coursework completed at another institution properly resides with the receiving institution, there is always the potential that academic credit will not transfer. In recognition of this reality, our institutions strive to ensure that all students are aware of this possibility prior to enrollment.

(4) Certain students were excluded from employment opportunities due to the source of the credential.

Our institutions routinely interact and work with employers across the country, not only to identify potential employment opportunities for current students and graduates, but also to help review our curricula, evaluate the facilities and equipment used, and provide feedback on student projects. In fact, our graduates have been hired by more than 14,000 different employers in the last several years, many of whom are household names.

In accordance with Section 3-1-441 of the *Accreditation Criteria*, our institutions provide employment assistance and document such activity. We do not guarantee employment or the starting salary of our graduates. We describe the career services that we provide to current students and graduates in the school catalog as follows:

STUDENT SERVICES

Career Services

The school's career services as specified below, are available to students and interested graduates, but the school does not make any promise or representation whatsoever to any student or graduate: (1) that the student or graduate will obtain any employment, whether full-time, part-time, upon graduation, during school, related to his or her education or otherwise; or (2) regarding any career opportunity, position, salary level and/or job title in any employment that the student or graduate may obtain, whether during school or upon graduation. No employment information or career service provided by the school to any student or graduate will be considered by the student or graduate, either expressly or impliedly, as any: (a) guarantee or promise of employment; (b) likelihood of employment; (c) indication of the level of employment or compensation any student or graduate may expect; or (d) indication of the types or job titles of positions for which students or graduates may qualify. Students and graduates are encouraged to not place restrictions on their job search endeavors regarding location, starting salary or specific benefits, as doing so may similarly restrict employment options and opportunities. Any employment that a student or graduate may obtain with the help of the school's career services will, in all probability and likelihood, be at an entry-level position.

Part-time Career Services

The school will assist any interested student in finding part-time work during his or her enrollment in a program of study at the school. The student must schedule his or her part-time employment so it does not interfere with the student's Class Schedule.

Graduate Career Services

The student will be advised of job postings and interview opportunities. Students will also be advised of where to access information on how to prepare for and appear at job interviews and how to conduct himself or herself during job interviews. The school offers helpful reference sources to assist the student in locating firms and geographic areas within the United States that offer employment opportunities related to his or her education. Job search activities generally intensify as the student nears graduation, so the student is encouraged to maintain contact with the Career Services Department and utilize its assistance. The Career Services Department is available to consult with any

interested student regarding career opportunities that may be available to him or her upon graduation. Alumni are also welcome to contact the Career Services Department for information on career opportunities. The graduate may have to relocate to take advantage of employment opportunities he or she may receive from potential employers.

Accordingly, we are unable to respond to a general, unsubstantiated claim that certain students may have been excluded from employment opportunities due to the source of their credential. We specifically do not make any representations to current or prospective students about their ability to obtain gainful employment following graduation.

(5) Information was shared with certain students that depicted financial gains they could expect upon graduation.

Prospective students interested in our institution are provided with a Graduate Employment Information form for their respective program of study prior to enrollment, which summarizes employment and salary outcomes for students who graduated from that program during the previous calendar year. A sample Graduate Employment Information form from a program of study in our School of Criminal Justice is attached for your reference.

Significantly, students are required to sign and date this form, and the following disclosure is provided immediately above where the student must sign:

Students and graduates may utilize the school's career employment services. However, these statistics are for information purposes only and the school DOES NOT make any promise or representation whatsoever to any student or graduate: (1) that the student or graduate will obtain any employment, whether part-time, graduate, education-related, in a field involving the student's program of study or otherwise; or (2) regarding any career opportunity, position, salary level and/or job title in any employment the student or graduate may obtain whether during school, upon graduation or in future years.

As with the immediately preceding response, our institutions do not make any representations to current or prospective students about their ability to obtain gainful employment following graduation, or the potential salary or financial gains they may earn.

(6) Certain faculty were allowed to encourage students to drop out of classes or programs.

Our institution strives to hire qualify faculty members who believe in our Mission and are committed to our core principles of quality, compliance and customer satisfaction. An integral component of this hiring process involves ascertaining that faculty members are academically and experientially appropriate to the subject matter they teach (see Section 3-1-541 of the *Accreditation Criteria*).

Once hired, faculty members receive in-service training, work to identify professional growth opportunities as part of their faculty development plan, and are afforded reasonable latitude in their choice of teaching methods. Our institution also maintains a central commitment to providing and protecting academic freedom and other conditions favorable to effective classroom instruction.

Given only a generalized comment that faculty members were allowed to “encourage students to drop out of classes or programs,” we are unable respond to this concern. However, as a hypothetical situation, if an instructor were to determine that a student was not academically prepared or otherwise competent to pursue a postsecondary education, it would not be inappropriate to advise the student accordingly.

(7) Investors have been told that declining new student enrollment numbers are a cause for concern at the highest level of the organization.

On December 10, 2015, the Department of Education (“ED”) advised us that our audited financial statements for the fiscal year ended December 31, 2014 had been reviewed, and yielded a composite score of 2.2 out of a possible 3.0. A copy of this letter is attached for your reference.

Significantly, the composite score reflects the overall relative financial health of institutions along a scale from negative 1.0 to positive 3.0. A score greater than or equal to 1.5 indicates the institution is considered financially responsible.

We are currently preparing our 2014 Form 10-K for public filing. Consistent with our commitment to with keeping ACICS fully informed of all relevant developments that would reasonably inform the Council’s deliberations regarding the accreditation status of the ITT Technical Institutes, we will continue to communicate regularly with ACICS about any developments and progress in this respect. Further, we will continue to ensure ACICS is copied on relevant communications with the ED.

In the event our institution elects to curtail or suspend operations at any ITT Technical Institute campus, we will continue to apprise ACICS of these decisions consistent with the our demonstrated ability to successfully execute a institutional teach-out plan. During the last two years, we have received submitted 10 campus closure plans for ACICS approval, and have successfully closed each campus.

In each prior instance, our decision to close a campus was made after careful consideration and deliberation, and a comprehensive plan was submitted to ACICS to help ensure that we would effectively protect the interests of our students during the transition period prior to closing the campus (as well as to satisfy the requirement that all member campuses submit a formal Teach-Out Plan for approval upon the occurrence of any event outlined in the Section 2-2-300 of the *Accreditation Criteria*). Based upon our prior history of effective execution, any decision to close additional campuses will follow our established process and methodology.

Thank you, and please let me know if you have any questions or require additional information.

Sincerely,

(b)(6)

Shawn J. Crawford
SVP, Chief Compliance and Officer



January 8, 2016

ID Code 00015354

VIA E-MAIL ONLY

Mr. Shawn J. Crawford
SVP, Chief Compliance Officer
ITT Educational Services, Inc.
13000 North Meridian Street
Carmel, IN 46032

Dear Mr. Crawford:

The Council has reviewed and continues to receive adverse information regarding a variety of financial and regulatory issues confronting ITT Educational Services, Inc. (ITT) from the news media and federal agencies, including the Department of Education. The Council is required to review any adverse information regarding an institution once such information becomes known.

New adverse information received by ACICS alleges that students enrolled in a criminal justice program at ITT were 1) assigned textbooks with typos and other quality issues; 2) not required to attend or participate in class; 3) unable to transfer class credits to other accredited institutions; and 4) excluded from employment opportunities due to the source of the credential. Further, the new adverse information alleges ITT, during the enrollment process, 5) shared information with students that depicted financial gains they could expect upon graduation, and 6) allowed ITT faculty to encourage students to drop out of classes or programs. Finally, ITT investors have been told that the company's "declining new student enrollment numbers" are 7) a cause for concern at the highest levels of the organization.

The ACICS *Criteria* stipulates:

3-2-200 – Instructional Resources, Materials: The instructional resources, audiovisual teaching equipment, and instructional materials shall be adequate to serve the needs of the institution's educational programs.

Appendix D, Standards of Satisfactory Progress: An essential element in providing appropriate instruction and support services to students is monitoring their satisfactory academic progress (SAP). The Council requires all institutions to develop a policy of satisfactory academic progress that measures whether students are maintaining satisfactory academic progress in their educational program.

3-1-413. Transfer of Credit. The institution shall make public its policies on transfer of credit, including a statement of the criteria established by the institution by which a determination is made with regard to accepting credits from another institution and if applicable, a list of institutions with which the institution has established articulation agreements. In addition, the institution must provide notification to students as to these articulation agreements and the transferability of the credits in the programs that are offered.

3-1-441(c) Counseling and Guidance. Institutions shall provide employment assistance and document activity. An institution shall not guarantee employment or the starting salary of its graduates.

3-1-410 – Admissions and Recruitment

It is up to an institution to establish its own admissions criteria. The ultimate responsibility for the activities of an institution's employees, vendors, contractors, or agents in the referral, recruiting, evaluation, and admissions processes always remains with the institution. An institution may not delegate without supervision these activities to anyone ... through means that are unethical or subject to public criticism or to admit ill-prepared applicants.

2-1-808- Financial Review. The Council reviews ... relevant information to monitor each institution's financial condition. When this review indicates that an institution's financial condition may be weak or deteriorating, the Council will require the institution to furnish ... narrative reports that demonstrate the actions the institution is taking to improve its financial condition.

Therefore, the Council requires that ITT:

1. Provide comprehensive responses to issues 1 through 6, as enumerated above.
2. Continues to provide periodic updates and copies of all materials submitted by ITT to the various agencies pursuant to their respective directives (e.g. biweekly cash flow projections submitted to the Department of Education).

3. Develops and submits for Council review a plan that provides for the continuation and completion of all students currently enrolled at every ACICS-accredited ITT campus in the event the enterprise elects to curtail or suspend operations, as described in the Section 2-2-303 of the Criteria:

The Council may direct a currently accredited institution to provide a school closure plan or a formal teach-out agreement in response to adverse information, high cohort default rate(s), low retention and/or placement rate(s), financial instability, or other concerns that may call into question the institution's ability to continue to serve the educational needs and objectives of its students or to continue as an on-going concern.

This information is due to ACICS no later than close of business Friday, February 26, 2016.

Regards,

(b)(6)

Anthony S. Bieda

Vice President for External Affairs

Graduate Employment Information

Criminology and Forensic Technology
Associate of Science

**ITT Technical
Institute**
5901 NW 183rd Street
Suite 100
Hialeah, FL 33015

At ITT Technical Institute, we help our students begin to prepare for career opportunities in a variety of entry-level positions in various fields involving the students' programs of study. The results of the graduates of the program of study specified above ("Program") are reflected in the following statistics:

Graduates

2014

Total graduates. ^(a)

12

Graduates who obtained employment by April 30 of the year following their graduation in a position that requires the direct or indirect use of the skills taught in the Program, including graduates who obtained this employment prior to enrolling in the Program, while enrolled in the Program or after graduating from the Program (collectively "Employed Graduates"). ^(b)

10

Percentage of total graduates represented by Employed Graduates.

83 %

a) These figures exclude the specified number of graduates who, as reported to the school: (i) have been admitted into other programs of study at postsecondary educational institutions that are scheduled to begin within one academic year following their graduation from the Program; (ii) possessed visas that did not permit them to work in the United States following graduation; (iii) were pregnant, died or suffered other health-related conditions that prevented them from working; (iv) were actively engaged in U.S. military service; (v) moved out of the Continental United States with a spouse or parent who was actively engaged in U.S. military service; or (vi) were incarcerated in a correctional institution (other than a half-way house) for more than 30 consecutive days.

1

b) The types of employment obtained by the Employed Graduates include:
Corrections Officer, Loss Prevention Associate, Police Officer, Security Guard, Security Officer

The employment and types of employment obtained by the Employed Graduates are based on information reported to the ITT Technical Institute by the Employed Graduates or their employers.

Salary (Annual)

Average ^(e)

\$ 25,688

High ^(e)

\$ 33,280

Low ^(e)

\$ 22,880

e) These figures represent calculations of the approximate annualized salaries based on the salary information reported to ITT Technical Institute by the specified number of Employed Graduates or their employers and exclude other factors that may be part of a compensation package, such as bonuses, incentives and the value of employee benefits. Variables that may affect the amount of the figures reported with respect to the Employed Graduates include, without limitation: each graduate's prior experience, performance, work history, work ethic, seniority and/or education; the firm size; the industry; the location; and the type of work.

Students and graduates may utilize the school's career employment services. However, these statistics are for information purposes only and the school DOES NOT make any promise or representation whatsoever to any student or graduate: (1) that the student or graduate will obtain any employment, whether part-time, graduate, education-related, in a field involving the student's program of study or otherwise; or (2) regarding any career opportunity, position, salary level and/or job title in any employment the student or graduate may obtain whether during school, upon graduation or in future years.

I have read and I understand the Graduate Employment Information specified above.

Student's Signature: _____ Date: _____ Sign Method: _____

Print Name: _____



December 10, 2015

Kevin M. Modany, CEO
ITT Educational Services, Inc.
13000 North Meridian Street
Indianapolis, IN 46032-1404

RE: Provisional/LOC Alternative
OPE IDs: 00473100 – Daniel Webster College
00732900 – ITT Technical Institute
03071800 – ITT Technical Institute

Dear Mr. Modany:

The Multi-Regional and Foreign School Participation Division- (SPD) has completed its review of ITT Educational Services, Inc. (ITT) audited financial statements for the fiscal year ended (FYE) December 31, 2014. In assessing the financial strength of ITT, the SPD's financial analyst reviewed the financial statements to ensure compliance with the regulatory requirements outlined in 34 C.F.R. § 668.171.

These financial statements yield a composite score of 2.2 out of a possible 3.0. A minimum score of 1.5 is necessary to meet the requirement of the financial standards. As a result, for the FYE December 31, 2014, ITT meets the required financial ratios to satisfy the financial responsibility standard set forth in 34 C.F.R. § 668.172. Despite this, the SPD has determined that ITT fails the condition of past performance and, therefore, is not financially responsible, as provided under § 668.174(a). Specifically, ITT failed to timely submit audited annual financial statements and compliance audits for the FYE December 31, 2013.

ITT was cited by letter from the Department dated August 19, 2014 for late submission of its annual compliance audits and financial statements. As a result of this past performance failure and the requirements of 34 C.F.R. §668.175(f),the SPD required ITT to participate in the Title IV, HEA programs under a Provisional Program Participation Agreement (PPPA) for three award years.

Additionally, the SPD required ITT to maintain a letter of credit (LOC) in the amount of \$79,707,879. This LOC represents ten percent (10%) of the Title IV, HEA program funds that ITT received for the fiscal year ending December 31, 2013. ITT was instructed to maintain this LOC through November 4, 2019.

Due to ITT's past performance failure under § 668.174(a) ITT is required to continue to maintain LOC: CPCS-805563 on file for \$79,707,879 which is scheduled to expire on November 04, 2019, and must comply with all of the requirements specified for the Provisional Certification Alternative in 34 C.F.R. § 668.175(f), including the Zone Alternative in 34 C.F.R. §

Federal Student Aid

An OFFICE of the U.S. DEPARTMENT of EDUCATION

Federal Student Aid, Multi-Regional and Foreign School Participation Division
830 First Street NE, Union Center ED00010979th floor, Washington, DC 20202-5340
www.FederalStudentAid.ed.gov

668.175(d)(2) and (3), and Requesting Funds 668.162 (e), including the disbursement of Title IV, HEA program funds under the Cash Monitoring 1. Under this option, ITT acknowledges that it has not met the U.S. Department of Education's (Department) standards of financial responsibility.

Compliance with Zone Alternative Requirements:

1) **Method of Payment** – ITT is required to make disbursements to eligible students and parents under the cash monitoring described under 34 C.F.R. § 668.162(e).

Under the Heightened Cash Monitoring 1 (HCM1) payment method, as required by 34 C.F.R. § 668.162(e), the Institution must first make disbursements to eligible students and parents before it requests or receives funds for the amount of those disbursements from the Department. This "Records First" requirement is fully described in the 2013-2014 Funding Authorization and Disbursement Information eAnnouncement, issued March 15, 2013. The funding request may not exceed the amount of the actual disbursements that were made to the students and parents included in the funding request. Provided the student accounts are credited before the funding requests are initiated, the Institution is permitted to draw down funds through the Department's electronic system for grants management and payments, G5, for the amount of disbursements it made to eligible students and parents.

The Records First requirement also means that institutions on HCM1 that are participating in the Direct Loan (DL) program will have their Current Funding Level (CFL) reduced to the greater of Net Approved and Posted Disbursements (NAPD) or Net Draws (processed payments less all refunds, returns, offsets, and drawdown adjustments). In the event of returning to Advanced Funded status, the institution will be expected to continue processing DL awards as Records First until the next DL global funding increase is processed.

Refer to the following eAnnouncement, <http://ifap.ed.gov/eannouncements/attachments/031513AttachImportantReminders1314FundingAuthandDisbursInfo.pdf>, for additional information about the Records First requirement.

2) **Notification Requirements** – ITT is required to provide information to the SPD by certified mail or electronic or facsimile transmission no later than 10 days after any of the oversight or financial events, as described below, occur. ITT must also include with the information it submits, written notice that details the circumstances surrounding the event(s) and, if necessary, what steps it has taken or plans to take, to resolve the issue.

- Any adverse action, including probation or similar action, taken against the Institution by its accrediting agency, State authorizing agencies or other Federal agency;
- Any event that causes the Institution, or related entity as defined in the Statement of Financial Accounting Standards (SFAS) 57, to realize any liability that was noted as a contingent liability in the Institution's or related entity's most recent audited financial statements;
- Any violation by the Institution of any loan agreement;

- Any failure of the Institution to make a payment in accordance with its debt obligations that results in a creditor filing suit to recover funds under those obligations;
- Any withdrawal of owner's equity/net assets from the Institution by any means, including by declaring a dividend; or
- Any extraordinary losses as defined in accordance with Accounting Principles Board (APB) Opinion No. 30
- Any filing of a petition by the Institution for relief in bankruptcy court.

1(d) Additional Reporting Requirements – Under the Zone Alternative, In order for the Department to monitor ITT's progress in improving the Institution's financial stability, ITT must continue to provide the following information about its current operations and future plans within the timeframe outlined in the Departments May 20, 2015, June 08, 2015, and October 19, 2015 letters:

- A Biweekly Report of ITT's 13 Week Projected Cash Flow Statement with financial disclosure notes;
- Cash Management and Disbursement Certification Forms regarding Title IV, HEA funds administered and drawn by ITT on behalf of its students.
- Monthly Student Roster and Disbursement Report;
- Reconciliation Report of all Title IV funds drawn as of the last day of the month proceeding the month before the submission date;
- Description of any conditions that have been established by any bank or other entity that are related to ITT's participation in the Title IV HEA programs;
- List of all individuals who have the authority to direct or otherwise control the payment of any "refund[s] of unearned institutional charges" to the Department;

Please refer to the Departments May 20, 2015, June 08, 2015, and October 19, 2015 letters, and any other modifications provided under a separate cover (ex: Emails) for detailed submission requirements (timeframe, formatting, etc.) for the above listed additional reporting documents.

Please continue to submit the additional reporting documents to the designated contact(s) outlined in the Departments May 20, 2015, June 08, 2015, and October 19, 2015.

Documents containing Personally Identifiable Information (PII) being submitted to the Department via electronic mail must be password protected. PII is any information about a student which can be used to distinguish or trace the student's identity (some examples are name, social security number, date and place of number, special character).

If ITT fails to continue to provide the information requested, the Department will be unable to determine if the financial responsibility standards have been met. Therefore, ITT may be referred to the Administrative Actions and Appeals Service Group for administrative action.

Letter of Credit Requirements

The letter of credit is necessary in the event that the Institution would close or terminate classes at other than the end of an academic period. It assures the Secretary that funds would be available from which to make refunds provide teach-out facilities and meet institutional obligations to the Department.

The Department notes, that we are currently working with ITT on a LOC Alternative Agreement (Agreement) to hold funds on behalf of ITT in lieu of a LOC. The Agreement is intended to fulfill the purposes of the Department's letter to ITT dated August 21, 2014, by which the Department required ITT to provide a letter of credit for late submission of its FY 2013 Annual Compliance Audits and Financial Statements under 34 C.F.R. §668.175(f). The Agreement is currently pending the Departments approval as of the date of this letter, and ITT will be notified under a separate cover of the outcome of the Agreement.

Our records indicate that ITT has LOC: CPCS-805563 on file for \$79,707,879 which is scheduled to expire on November 04, 2019. At this time, ITT must continue to maintain the LOC with the Department.

ITT is required to notify the SPD within 3 calendar days, in the event the LOC issuing institution should fail, resulting in financial transactions and operations being administered by the Federal Deposit Insurance Corporation. ITT will also be required to submit a new replacement LOC issued by a different and non-failed U.S. bank, within 75 calendar days.

Promptly contact Henry A. Johnson, Payment Analyst for the SPD at (202) 377-4589 with any questions regarding the ITT's current DL award authorization level or the Records First requirements. If you have any questions regarding the financial responsibility determination, or disagree with the reason or methodology used for this determination, please contact Tiffany Hill, Financial Analyst, within 30 calendar days at (202) 377-4225.

Sincerely,

(b)(6)

Michael J. Frola
Director, Multi-Regional and Foreign Schools Participation Division

Enclosures: Sample Letter of Credit

The Departments August 19, 2014 Letter to ITT
The Departments August 21, 2014 Letter to ITT
The Departments May 20, 2015 Letter to ITT
The Departments June 08, 2015 Letter to ITT
The Departments October 19, 2015 Letter to ITT

cc: Kevin M. Modany, Chief Executive Officer (kmodany@ittesi.com)
Daniel M. Fitzpatrick, Chief Financial Officer (dfitzpatrick@ittesi.com)
Michael E. Diffily, Daniel Webster College President (diffily@dwc.edu)
New England Association of Schools and Colleges – CHE (Higher Education)
Accrediting Council for Independent Colleges and Schools
WA Student Achievement
Texas Work Force Commission
PA Division of Private License Schools, Bureau of Postsecondary Services
PA Division of Program Approval Bureau of Academic Programs
AL Commission on Higher Education
Arkansas Department of Higher Education
Colorado Commission on Higher Education
Commission for Independent Education – Florida Department of Education
ID State Board of Education
MO Coordinating Board for Higher Education
TX Higher Education Coordinating Board
Maryland Higher Education Commission
WV Council for Community and Technical College Education
State Council of Higher Education for Virginia
Minnesota Office of Higher Education
NM Higher Education Department
AL Department of Postsecondary Education
AZ State Board for Private Postsecondary Education
NE Department of Education
SC Commission on Higher Education
OH Board of Regents
CA Bureau for Private Postsecondary Education
MA Department of Higher Education (formerly MA Board of Higher Edu)
Michigan Department of Labor & Economic Growth
Louisiana State Board of Regents
Iowa College Student Aid Commission
NY The State Education Department, Office of Higher Education
NV Commission on Postsecondary Education
Oregon Student Assistance Commission Office of Degree Authorization
KY Council on Postsecondary Education
Tennessee Higher Education Commission
GA Non-Public Postsecondary Education Commission
The Board of Governors of the University of NC
WI Educational Approval Board
UT System of Higher Education
MS Commission on Proprietary School & College Registration
Ohio State Board of Career Colleges and Schools
Oklahoma State Regents for Higher Education
Illinois Board of Higher Education
KS Board of Regents

NJ Commission on Higher Education
Indiana Commission for Higher Education Board for Proprietary Education
NH Dept. of Education, Division of Higher Education

IRREVOCABLE LETTER OF CREDIT

<Insert name, address and telephone number of issuing bank>

To beneficiary:

U.S. Department of Education
ATTN: Veronica Pickett, Director
Performance Improvement and Procedures
Federal Student Aid/Program Compliance
830 First Street, NE, UCP3, MS 5435
Washington, DC 20002-8019

Date: <Insert Date LOC Issued>

Amount: \$ <Insert U.S. Dollar amount>

Expiration Date: <Insert Date>

Dear Sir/Madam:

We hereby establish our Irrevocable Letter of Credit Number <Insert LOC Number> in your favor for the account of:

<Insert Name and Address of Institution>

OPE-ID #: <Insert 8 digit Office of Postsecondary Education ID number>

Hereafter, <Insert Name of Institution> ("Institution"), presents, in the amount of \$<Insert Dollar Amount> (U.S. dollars), available by your draft (or drafts drawn on us) at sight accompanied by:

- a) the original of this letter of credit instrument (along with originals of all amendments), and
- b) a statement signed by the Secretary ("Secretary"), U.S. Department of Education ("Department"), or the Secretary's representative, certifying that the drafted funds will be used for one or more of the following purposes, as determined by the Secretary:
 - 1) to pay refunds of institutional or non-institutional charges owed to or on behalf of current or former students of the Institution, whether the Institution remains open or has closed,
 - 2) to provide for the "teach-out" of students enrolled at the time of the closure of the Institution, and
 - 3) to pay any liabilities owing to the Secretary arising from acts or omissions by the Institution, on or before the expiration

**U.S. Department of Education
Irrevocable Letter of Credit for
<Insert Name of Institution>
Page 2**

of this letter of credit, in violation of requirements set forth in the Higher Education Act of 1965, as amended ("HEA"), including the violation of any agreement entered into by the Institution with the Secretary regarding the administration of programs under Title IV of the HEA.

Should the Institution fail to renew the letter of credit within ten (10) days prior to its expiration, as directed by the Department, the Department may call the letter of credit and place the funds in an escrow account at the Department pending a prompt determination of the extent to which those funds will be used in accordance with subparagraphs 1) through 3), above.

We hereby agree with you that partial drawings are permitted and that drafts drawn under and in compliance with the terms of this letter of credit will be duly honored upon due presentation at our offices on or before the expiration date of this letter of credit.

This letter of credit is subject to the International Standby Practices (ISP98), International Chamber of Commerce Publication Number 590.

Printed Legal Name

Authorized Signature

Date Signed

Printed Official Title of Authorized Signer



AUG 19 2014

Kevin M. Modany,
CEO
ITT Educational Services, Inc
13000 North Meridian Street
Indianapolis, IN 46032-1404

Tracking # 1ZA879640199090819

RE: Annual Submission Citation Letter
OPE IDS: 00473100 - Daniel Webster College
00732900 - ITT Technical Institute
03071800 - ITT Technical Institute

Dear Mr. Modany:

According to the Department of Education's (Department) records, ITT Educational Services, Inc.'s (ITT) fiscal year ends December 31st. Therefore, pursuant to 34 C.F.R. § 668.23(a)(4) or (a)(5), ITT's annual audit submission, consisting of its compliance and financial statement audits, for its fiscal year ended (FYE) December 31, 2013 was due to the Department on or before June 30, 2014. The Department sent ITT notices on May 1, 2014 and May 31, 2014 reminding ITT of this requirement. Nevertheless, as of August 7, 2014, the Department has not received a complete and acceptable annual audit submission from ITT for FYE December 31, 2013. This letter advises you that this untimely audit submission constitutes a failure of financial responsibility under the Department's regulations.

Citation for failure to submit acceptable compliance and financial statement audits timely is a past performance violation under 34 C.F.R. § 668.174(a)(3), which results in, among other things, provisional certification, the posting of a letter of credit, and placement on a heightened cash monitoring payment method, for a minimum of five years. Further, 34 C.F.R. § 668.171(e) provides that an institution's failure to submit compliance and financial statement audits by the date permitted and in the manner required under 34 C.F.R. § 668.23 may result in the Department initiating adverse action against the institution, including terminating or revoking the institution's program participation agreement. In addition, if the institution has an application pending for renewal of its certification, the Department may deny that application for continued participation.

Please note that additional administrative actions are pending against your institution based upon this issue and ITT will be receiving a separate letter requesting a letter of credit and imposing restrictions under the Provisional Certification Alternative 34 C.F.R. § 668.175(f). It is therefore imperative that ITT immediately submit complete and acceptable compliance and financial statement audits for FYE December 31, 2013.

Federal Student Aid
An OFFICE of the U.S. DEPARTMENT of EDUCATION

830 First Street, NE, Washington, DC 20202

ITT Educational Services, Inc.
OPE ID: 00473100 - Daniel Webster College
OPE ID: 00732900 - ITT Technical Institute
OPE ID: 03071800 - ITT Technical Institute
Page 2 of 3

If you have any questions regarding this matter, please contact Eric Miles at (202) 377-4095.

Sincerely,

(b)(6)

Michael Frola
Director,
Multi-Region and Foreign School Participation Division

cc: Kevin M. Modany, CEO (kmodany@ittesi.com)
Michael E. Diffily, President (diffily@dwc.edu)
Daniel M. Fitzpatrick, Executive Vice President, CFO, dfitzpatrick@ittesi.com
New England Association of Schools and Colleges - CHE (Higher Education)
Accrediting Council for Independent Colleges and Schools
WA Student Achievement Council
WA Student Achievement Council
Texas Work Force Commission
PA Division of Private License Schools, Bureau of Postsecondary Services
PA Division of Program Approval Bureau of Academic Programs
AL Commission On Higher Education
Arkansas Department of Higher Education
Colorado Commission on Higher Education
Commission for Independent Education - Florida Department of Education
ID State Board Of Education
MO Coordinating Board for Higher Education
TX Higher Education Coordinating Board
Maryland Higher Education Commission
WV Council for Community and Technical College Education
State Council of Higher Education for Virginia
Minnesota Office of Higher Education
NM Higher Education Department
AL Department of Postsecondary Education
AZ State Board for Private Postsecondary Education
NE Department of Education
SC Commission on Higher Education
OH Board of Regents
CA Bureau for Private Postsecondary Education
MA Department of Higher Education (formerly MA Board of Higher Edu)
Michigan Department Of Labor & Economic Growth
Louisiana State Board of Regents
Iowa College Student Aid Commission

ITT Educational Services, Inc.
OPE ID: 00473100 - Daniel Webster College
OPE ID: 00732900 - ITT Technical Institute
OPE ID: 03071800 - ITT Technical Institute
Page 3 of 3

NY The State Education Department, Office of Higher Education
NV Commission on Postsecondary Education
Oregon Student Assistance Commission Office of Degree Authorization
KY Council on Postsecondary Education
Tennessee Higher Education Commission
GA Non-Public Postsecondary Education Commission
The Board of Governors of the University of NC
WI Educational Approval Board
UT System of Higher Education
MS Commission on Proprietary School & College Registration
Ohio State Board of Career Colleges and Schools
Oklahoma State Regents for Higher Education
Illinois State Board of Education
KS Board of Regents
NJ Commission on Higher Education
Indiana Commission for Higher Education Board for Proprietary Education
NH Dept. of Education, Division of Higher Education



August 21, 2014

Kevin M. Modany, CEO
ITT Educational Services, Inc.
13000 North Meridian Street
Indianapolis, IN 46032-1404

RE: Letter of Credit Request – First Year Past Performance
Provisional Certification
OPE IDs: 00473100 – Daniel Webster College
00732900 – ITT Technical Institute
03071800 – ITT Technical Institute

Dear Mr. Modany:

On August 19, 2014 the Department of Education (Department) sent a letter citing ITT Educational Services, Inc. (ITT) for failure to timely submit an acceptable annual compliance audit and/or audited financial statement submission for its fiscal year ended December 31, 2013. This letter advises you that untimely submissions constitute a failure of financial responsibility under the Department's regulations. Pursuant to 34 C.F.R. §§ 668.171(c)(1)(ii), 668.171(d)(2), and 668.174(a)(3), an institution is not financially responsible if the institution has been cited during the preceding five years for failure to timely submit an acceptable annual compliance and/or financial statement audit. This means that ITT will not be financially responsible under the Department's regulations for five years from August 21, 2014, or longer if the institution provides untimely submissions in subsequent years.

In view of this failure to meet the financial responsibility requirements under the regulations, ITT may continue participation in the Title IV, HEA programs as required by 34 C.F.R. § 668.175(f)(1). Therefore, ITT will be provisionally certified for a period of three years. Because this is a failure of the financial responsibility regulations, the institution is also required to post an irrevocable letter of credit (LOC) for a period of five years. Upon expiration of the three year provisional period, the certification will be extended for the duration of the LOC requirement.

Under the *Provisional Certification Alternative*, per 34 C.F.R. § 668.175(f)(2)(i), ITT is required to submit an irrevocable LOC in the amount of \$79,707,879. This amount represents 10% of the Title IV, HEA program funds received by ITT during its most recently completed fiscal year. Please note that the LOC amount will change based on the funds received in subsequent fiscal years by ITT. Therefore, the Department will advise you of any future amendments needed to the LOC.

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Federal Student Aid, Multi-Regional and Foreign School Participation Division
830 First Street NE, Union Center Plaza, 7th Floor, Washington, DC 20202-5340
www.FederalStudentAid.ed.gov

ED00010990

This *Provisional Certification Alternative* also requires, per 34 C.F.R. § 668.175(f)(2)(iii), compliance with the provisions under the *Zone Alternative* which are specified at 34 C.F.R. § 668.175(d)(2) and (3) including cash monitoring method 1.

Letter of Credit Requirements

A sample of an irrevocable LOC is enclosed. Your lending institution must use this format on its letterhead with no deviation in the language contained therein.

ITT's LOC must:

1. **Be issued by a United States bank**
ITT is required to notify the Multi-Regional and Foreign School Participation Division within 3 business days in the event the financial institution that issued the irrevocable LOC should fail, resulting in financial transactions and operations being administered by the Federal Deposit Insurance Corporation. ITT will be required to submit a new replacement LOC issued by a different and non-failed U.S. bank within 75 business days.
2. **Cover the five year period 11/04/2014 through 11/04/2019**
3. **Be received 75 calendar days from the date of this letter (November 4, 2014)**
Please note that if ITT fails to provide the irrevocable LOC within 75 calendar days, the institution will be subject to termination under 34 C.F.R. § 668.86, revocation of its PPA, or denial of a pending application for recertification. Also, please note that information regarding the LOC is subject to the Freedom of Information Act (FOIA) of 1966, as amended.

The irrevocable LOC must be made payable to the Secretary, U.S. Department of Education and mailed to the following address:

Veronica Pickett, Director
Performance Improvement and Procedures Service Group
U.S. Department of Education
Federal Student Aid/Program Compliance
830 First Street, NE, UCP3, MS 5435
Washington, DC 20002-8019

Zone Alternative Requirements:

- 1) **Method of Payment** – ITT is required to make disbursements to eligible students and parents under the Heightened Cash Monitoring method of payment as described under 34 C.F.R. § 668.162(e)(1).

Under the Heightened Cash Monitoring (HCM) payment method as stated in 668.162(d), the Institution must first make disbursements to eligible students and parents before it

requests or receives funds for the amount of those disbursements from the Department. This "Records First" requirement is fully described in the 2013-2014 Funding Authorization and Disbursement Information eAnnouncement, issued March 15, 2013. The funding request may not exceed the amount of the actual disbursements that were made to the students and parents included in the funding request. Providing the student accounts are credited before the funding requests are initiated, the Institution is permitted to draw down funds through the Department's electronic system for grants management and payments, G5, for the amount of disbursements it made to eligible students and parents.

The Records First requirement also means that institutions on HCM1 that are participating in the Direct Loan (DL) program will have their Current Funding Level (CFL) reduced to the greater of Net Approved and Posted Disbursements (NAPD) or Net Draws (processed payments less all refunds, returns, offsets, and drawdown adjustments). In the event of returning to Advanced Funded status, the institution will be expected to continue processing DL awards as Records First until the next DL global funding increase is processed.

Refer to the following eAnnouncement:

<http://ifap.ed.gov/eannouncements/attachments/031513AttachImportantReminders1314FundingAuthandDisbursInfo.pdf>, for additional information about the Records First requirement.

2) Notification Requirements - ITT is required to provide information to the Multi-Regional and Foreign School Participation Division by certified mail or electronic or facsimile transmission no later than 10 days after any of the oversight or financial events, as described below, occur:

- Any adverse action, including probation or similar action, taken against ITT by its accrediting agency, State authorizing agencies or a Federal agency;
- Any event that causes ITT or related entity as defined in the Statement of Financial Accounting Standards (SFAS) 57, to realize any liability that was noted as a contingent liability in ITT's or related entity's most recent audited financial statements;
- Any violation by ITT of any loan agreement;
- Any failure of ITT to make a payment in accordance with its debt obligations that results in a creditor filing suit to recover funds under those obligations;
- Any withdrawal of owner's equity/net assets from ITT by any means, including by declaring a dividend;
- Any extraordinary losses as defined in accordance with Accounting Principles Board (APB) Opinion No. 30; or
- Any filing of a petition by ITT for relief in bankruptcy court.

ITT also include with the information it submits, written notice that details the circumstances surrounding the event(s) and, if necessary, what steps it has taken or plans to take to resolve the issue.

Promptly contact Henry A. Johnson, Payment Analyst for the Multi-Regional and Foreign School Participation Division at (202) 377-4589 with any questions regarding the ITT's **current DL award authorization level or the Records First requirements.**

If you have any questions regarding the **financial responsibility determination**, or disagree with the reason or methodology used for this determination, please contact Tiffany Hill, Financial Analyst, within 30 calendar days at (202) 377-4225.

Sincerely,

(b)(6)

Michael J. Frola
Director, Multi-Regional and Foreign School Participation Division

Enclosures: Sample Irrevocable Letter of Credit

cc: Kevin M. Modany, CEO (kmodany@ittesi.com)
Michael E. Diffily, President (diffily@dwc.edu)
Daniel M. Fitzpatrick, Executive Vice President, CFO, (dfitzpatrick@ittesi.com)
New England Association of Schools and Colleges – CHE (Higher Education)
Accrediting Council for Independent Colleges and Schools
WA Student Achievement
Texas Work Force Commission
PA Division of Private License Schools, Bureau of Postsecondary Services
PA Division of Program Approval Bureau of Academic Programs
AL Commission on Higher Education
Arkansas Department of Higher Education
Colorado Commission on Higher Education
Commission for Independent Education – Florida Department of Education
ID State Board of Education
MO Coordinating Board for Higher Education
TX Higher Education Coordinating Board
Maryland Higher Education Commission
WV Council for Community and Technical College Education
State Council of Higher Education for Virginia
Minnesota Office of Higher Education
NM Higher Education Department
AL Department of Postsecondary Education
AZ State Board for Private Postsecondary Education
NE Department of Education
SC Commission on Higher Education
OH Board of Regents
CA Bureau for Private Postsecondary Education
MA Department of Higher Education (formerly MA Board of Higher Edu)

Michigan Department of Labor & Economic Growth
Louisiana State Board of Regents
Iowa College Student Aid Commission
NY The State Education Department, Office of Higher Education
NV Commission on Postsecondary Education
Oregon Student Assistance Commission Office of Degree Authorization
KY Council on Postsecondary Education
Tennessee Higher Education Commission
GA Non-Public Postsecondary Education Commission
The Board of Governors of the University of NC
WI Educational Approval Board
UT System of Higher Education
MS Commission on Proprietary School & College Registration
Ohio State Board of Career Colleges and Schools
Oklahoma State Regents for Higher Education
Illinois State Board of Education
KS Board of Regents
NJ Commission on Higher Education
Indiana Commission for Higher Education Board for Proprietary Education
NH Dept. of Education, Division of Higher Education

IRREVOCABLE LETTER OF CREDIT

<Insert name, address and telephone number of issuing bank>

To beneficiary:

U.S. Department of Education
ATTN: Veronica Pickett, Director
Performance Improvement and Procedures
Federal Student Aid/Program Compliance
830 First Street, NE, UCP3, MS 5435
Washington, DC 20002-8019

Date: <Insert Date LOC Issued>
Amount: \$ <Insert U.S. Dollar amount>
Expiration Date: <Insert Date>

Dear Sir/Madam:

We hereby establish our Irrevocable Letter of Credit Number <Insert LOC Number> in your favor for the account of:

<Insert Name and Address of Institution>

OPE-ID #: <Insert 8 digit Office of Postsecondary Education ID number>

Hereafter, <Insert Name of Institution> ("Institution"), presents, in the amount of \$<Insert Dollar Amount> (U.S. dollars), available by your draft (or drafts drawn on us) at sight accompanied by:

- a) the original of this letter of credit instrument (along with originals of all amendments), and
- b) a statement signed by the Secretary ("Secretary"), U.S. Department of Education ("Department"), or the Secretary's representative, certifying that the drafted funds will be used for one or more of the following purposes, as determined by the Secretary:
 - 1) to pay refunds of institutional or non-institutional charges owed to or on behalf of current or former students of the Institution, whether the Institution remains open or has closed,
 - 2) to provide for the "teach-out" of students enrolled at the time of the closure of the Institution, and
 - 3) to pay any liabilities owing to the Secretary arising from acts or omissions by the Institution, on or before the expiration

**U.S. Department of Education
Irrevocable Letter of Credit for
<Insert Name of Institution>
Page 2**

of this letter of credit, in violation of requirements set forth in the Higher Education Act of 1965, as amended ("HEA"); including the violation of any agreement entered into by the Institution with the Secretary regarding the administration of programs under Title IV of the HEA.

Should the Institution fail to renew the letter of credit within ten (10) days prior to its expiration, as directed by the Department, the Department may call the letter of credit and place the funds in an escrow account at the Department pending a prompt determination of the extent to which those funds will be used in accordance with subparagraphs 1) through 3), above.

We hereby agree with you that partial drawings are permitted and that drafts drawn under and in compliance with the terms of this letter of credit will be duly honored upon due presentation at our offices on or before the expiration date of this letter of credit.

This letter of credit is subject to the International Standby Practices (ISP98), International Chamber of Commerce Publication Number 590.

Printed Legal Name

Authorized Signature

Date Signed

Printed Official Title of Authorized Signer



May 20, 2015

Kevin M. Modany
Chief Executive Officer
ITT Educational Services, Inc.
13000 North Meridan Street
Carmel, IN 46032-1404

RE: Additional Reporting Requirements
OPE IDs:

00732900 – ITT Technical Institute
03071800 – ITT Technical Institute
00473100 – Daniel Webster College

Dear Mr. Modany:

On August 19, 2014, the Department of Education (Department) cited ITT Educational Services, Inc. (ITT) for failure to timely submit an acceptable annual compliance audit and/or financial statement submission for fiscal year ending December 31, 2013.

In view of that failure to meet the financial responsibility standards requires ITT to participate in the Title IV, HEA programs under the Provisional Certification Alternative (34 C.F.R. § 668.175(f)(1), a part of the Provisional Certification Alternative is a Zone Alternative Notification Requirement.

Zone Alternative (34 C.F.R. § 668.175(d)(2)(iv))

Under the Zone Alternative, 34 C.F.R § 668.175(d)(2)(iv)), the Department may require the institution to provide information about its current operations and future plans.

Due to the recent announcement on May 12, 2015 by the Securities and Exchange Commission (SEC) of certain civil fraud charges brought against ITT and two of its executive officers, the Department requires additional notification requirements to monitor ITT's ongoing participation in the federal student aid programs. Effective with the date of this letter, ITT must submit the following documents to the Department within the timeframe outlined below:

- ITT's 13 week projected cash flow statement with disclosures that outline the following:
 - Any important financial transaction that has a material effect on ITT's financial condition.
 - Any mergers, acquisitions, business expansions, and/or corporate restructuring.
 - Any announced or upcoming location expansions and/or closures.

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ED00010997

- Any new programs ITT plans to offer within the next 60 days at one or more locations that participate in the federal student aid programs.

The cash flow statement should be sent to the Department via electronic mail (email) on a bi-weekly basis.

In addition to the cash flow statements the Department is requiring ITT to submit Student rosters in Microsoft Excel format with the following information on a monthly basis:

- Student name, 4 Digit SSN, DOB, Address, phone number, email address, Program of Study, Program Start Date, Anticipated Graduation Date, Current enrollment status (Active, Leave of Absence), educational location.

Documents containing Personally Identifiable Information (PII) being submitted to the Department via electronic mail must be password protected. PII is any information about a student which can be used to distinguish or trace the student's identity (some examples are name, social security number, date and place of number, special character).

Please note, all other Zone Notification Requirements outlined in the Departments January 27, 2015 letter to ITT, still remain in effect, and ITT must continue to adhere to those reporting requirements as well.

Please submit documents via email to the following contacts:

Tiffany Hill, Financial Analyst (Tiffany.Hill@ed.gov)
Byron Scott, Case Manager (Byron.Scott@ed.gov)

The first submission is due no later than the close of business on 06/01/2015, and thereafter as outlined in the submission timeframes listed above. If ITT fails to provide the information requested, we will be unable to determine if the financial responsibility standards have been met. Therefore, ITT may be referred to the Administrative Actions and Appeals Service Group for administrative action.

If you have any questions or would like to discuss the information provided in this letter, please contact Tiffany Hill, Financial Analyst, at 202-377-4225.

Sincerely,

(b)(6)

Michael J. Frola
Director, Multi-Regional and Foreign School Participation Division

Enclosure: Copy of the January 27, 2015 letter to ITT

cc: Kevin M. Modany, Chief Executive Officer (kmodany@ittesi.com)

Daniel M. Fitzpatrick, Chief Financial Officer (dfitzpatrick@ittesi.com)
Daniel Webster College, Daniel Webster College President (difily@dwc.edu)
New England Association of Schools and Colleges – CHE (Higher Education)
Accrediting Council for Independent Colleges and Schools
WA Student Achievement
Texas Work Force Commission
PA Division of Private License Schools, Bureau of Postsecondary Services
PA Division of Program Approval Bureau of Academic Programs
AL Commission on Higher Education
Arkansas Department of Higher Education
Colorado Commission on Higher Education
Commission for Independent Education – Florida Department of Education
ID State Board of Education
MO Coordinating Board for Higher Education
TX Higher Education Coordinating Board
Maryland Higher Education Commission
WV Council for Community and Technical College Education
State Council of Higher Education for Virginia
Minnesota Office of Higher Education
NM Higher Education Department
AL Department of Postsecondary Education
AZ State Board for Private Postsecondary Education
NE Department of Education
SC Commission on Higher Education
OH Board of Regents
CA Bureau for Private Postsecondary Education
MA Department of Higher Education (formerly MA Board of Higher Edu)
Michigan Department of Labor & Economic Growth
Louisiana State Board of Regents
Iowa College Student Aid Commission
NY The State Education Department, Office of Higher Education
NV Commission on Postsecondary Education
Oregon Student Assistance Commission Office of Degree Authorization
KY Council on Postsecondary Education
Tennessee Higher Education Commission
GA Non-Public Postsecondary Education Commission
The Board of Governors of the University of NC
WI Educational Approval Board
UT System of Higher Education
MS Commission on Proprietary School & College Registration
Ohio State Board of Career Colleges and Schools
Oklahoma State Regents for Higher Education
Illinois State Board of Education
KS Board of Regents
NJ Commission on Higher Education
Indiana Commission for Higher Education Board for Proprietary Education
NH Dept. of Education, Division of Higher Education

13 Week Cash Flow Projections

Page 2 of 2

MONTHLY BUDGET
Accounts Payable
Accounts Receivable
Inventory
Fixed Assets
Other
Other Income
Subtotal
NET CASH FLOW
Beginning Cash Balance
Ending Cash Balance

EXAMPLE

13 Week Cash Flow Projections

Footnotes to 13 Week Flow Projections

List all footnotes to the 13 week cash flow projections, describing in detail the practices and reporting policies of the company's accounting methods and disclose additional information.

EXAMPLE

Business and Financial Disclosures

Provide any important financial transactions that has a material effect on the company's financial condition.

Any mergers, acquisitions, business expansions, and/or corporate restructuring.

Any announced or upcoming location expansions and/or closures.

Any new programs the company plans to offer within the next 60 days at one or more locations that participate in the federal student aid programs.

EXAMPLE

ED00011004



June 08, 2015

Kevin M. Modany
Chief Executive Officer
ITT Educational Services, Inc.
13000 North Meridan Street
Carmel, IN 46032-1404

RE: Projected Cash Flow Statement and Business and Financial Disclosure Notes
OPE IDs:

00732900 – ITT Technical Institute
03071800 – ITT Technical Institute
00473100 – Daniel Webster College

Dear Mr. Modany:

The Multi- Regional and Foreign Schools Participation Division- (MRFSPD) has completed its review of the additional reporting documents submitted to the Department on June 01, 2015 from ITT Educational Services, Inc. (ITT).

In assessing the information and format of the documents provided, the Department requires that ITT provide a more detail 13 week projected cash flow statements that breaks-out each anticipated inflow and outflow by line item and amount. In addition, ITT's business and financial disclosure notes should be listed as a component of the 13 week projected cash flow statement.

A sample 13 week projected cash flow statement is enclosed and ITT should use this as a guideline for future submissions to the Department. Please note, all other Zone Notification Requirements outlined in the Departments May 20, 2015 and January 27, 2015 letter to ITT, still remain in effect, and ITT must continue to adhere to those reporting requirements and due dates as well.

The first submission in this format is due no later than the close of business on 06/29/2015, and thereafter as outlined in the submission timeframes listed in the Departments May 20, 2015 letter. If ITT fails to provide the information requested, we will be unable to determine if the financial responsibility standards have been met. Therefore, ITT may be referred to the Administrative Actions and Appeals Service Group for administrative action.

If you have any questions or would like to discuss the information provided in this letter, please contact Tiffany Hill, Financial Analyst, at 202-377-4225.

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ED00011005

Sincerely,

(b)(6)

Michael J. Frola
Director, Multi-Regional and Foreign School Participation Division

Enclosure: 13 Week Projected Cash Flow Statement Example

cc: Kevin M. Modany, Chief Executive Officer (kmodany@ittesi.com)
Daniel M. Fitzpatrick, Chief Financial Officer (dfitzpatrick@ittesi.com)
Michael E. Diffily, Daniel Webster College President (diffily@dwc.edu)
Robin M. Shapiro, Director Regulatory Affairs (rshapiro@itt-tech.edu)



October 19, 2015

Kevin M. Modany
Chief Executive Officer
ITT Educational Services, Inc.
13000 North Meridian Street
Carmel, IN 46032-1404

Re: Additional Reporting Requirements
OPE-IDs: 00732900 – ITT Technical Institute
03071800 – ITT Technical Institute
00473100 – Daniel Webster College

Dear Mr. Modany:

As a result of its heightened review of ITT Educational Services, Inc. (ITT), the U.S. Department of Education (Department) is providing this letter to identify additional procedures that ITT will need to follow in order to continue its participation in Title IV, HEA programs under ITT's current heightened cash monitoring method of payment.

On August 19, 2014, the Department sent you a letter citing ITT for its failure to submit timely an acceptable annual compliance audit and/or audited financial statement submission for ITT's fiscal year ending December 31, 2013. ITT's failure to make this timely submission resulted in the Department imposing a requirement that ITT be provisionally certified for a cumulative period of at least five years, pursuant to 34 C.F.R. § 668.175(f), and that ITT post an irrevocable letter of credit (LOC) for a period of five years in the amount of 10% of the Title IV, HEA program funds received by ITT during its most recently completed fiscal year (approximately \$79.7 million). At that same time, the Department also required ITT to make disbursements to eligible students and parents under the Heightened Cash Monitoring method of payment, as described in 34 C.F.R. § 668.162(e)(1) (HCM1).

Subsequent events since August 2014 – including ITT's failure of the general standards of financial responsibility set forth in 34 C.F.R. Part 668, Subpart L (due to a failing financial composite ratio) and the announcement by the Securities and Exchange Commission of a civil action against ITT and two of its officers – led the Department to impose additional reporting requirements, in order to permit the Department to more closely monitor ITT's ongoing participation in Title IV, HEA programs.

In taking each of the steps noted above, the Department considered – as it has considered again with the issuance of this letter – that as a condition of participation in Title IV, HEA programs, ITT agreed to act as a fiduciary responsible for the administration of federal funds. See 34 C.F.R. § 668.14(b)(2). Moreover, in issuing this letter, the Department has again considered that its Cash Management regulations are expressly intended to promote sound cash management of Title IV,

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Multi-Regional & Foreign Schools Participation Division

Union Center Plaza, 830 First Street, N.E., 7th Floor

Washington, DC 20202

ED00011007
StudentAid.gov

HEA program funds by an institution, to minimize the financing costs to the Federal Government of making Title IV, HEA program funds available to a student or an institution, and to minimize the costs that accrue to a student under a Title IV, HEA loan program. 34 C.F.R. § 668.161(a)(1).

RECONCILIATION OF TITLE IV, HEA PROGRAM FUNDS

When a school receives funds pursuant to a Title IV, HEA program, it holds those funds in trust for intended student beneficiaries. As a trustee of, and with a fiduciary responsibility to administer and account for, those funds, a participating institution must have procedures in place that ensure that Title IV funds are used as intended. As described in the Federal Student Aid handbook, a “key component” of compliance with the cash management regulations and the fiduciary standards is the process of reconciliation. Title IV reconciliation is the process by which a school reviews and compares Title IV aid recorded on the Department’s systems with the information in the school’s internal records. Through reconciliation, disbursement and cash discrepancies are identified and resolved in a timely manner to ensure the school meets all regulatory requirements. Schools must document their reconciliation efforts and retain this documentation for auditing purposes.

With respect to the Direct Loan program, institutions are required to reconcile, on a monthly basis, institutional records with Direct Loan funds received from the Department and Direct Loan disbursement records submitted to and accepted by the Department. *See* 34 C.F.R. § 685.300(b)(5). Institutions are also required to implement a quality assurance system to ensure they are complying with program requirements and meeting program objectives. *See* 34 C.F.R. § 685.300(b)(9). The quality assurance process should document that the school is completing monthly reconciliation and program year closeout.¹

With respect to the Pell Grant program, FSA has advised participating institutions that, at a minimum, an institution should reconcile FSA financial records at least monthly. *See* FSA Handbook 2015-16 at 4-92. FSA has also cautioned institutions that, “the more frequently [a] school performs reconciliation, the more likely you will be able to identify issues and resolve them before they become part of a systemic problem.” *Id.* FSA has further cautioned that “it is almost impossible to satisfy other program requirements without performing monthly reconciliation of your school’s Pell Grant Program participation.” *Id.* at 4-96. As further provided in the FSA Handbook:

If a school is meeting all disbursement/adjustment reporting, excess cash, and reconciliation requirements, final reconciliation should begin no later than the last award or payment period end date at the school for a given program and year. A school should be able to reconcile to a zero ending cash balance soon after its final disbursements and should not carry an ending cash balance (positive or negative) for an extended period.

¹ *See* Electronic Announcement dated November 21, 2014 (<http://ifap.ed.gov/eannouncements/112114DirectLoanProgramReconciliation.html>); Electronic Announcement dated November 13, 2013 (<http://ifap.ed.gov/eannouncements/111313DirectLoanQualityAssuranceRequirementReminder.html>)

2015-16 FSA Handbook at 4-101.

During the course of its heightened oversight of ITT, the Department has reached the following conclusions with respect to ITT's cash management:

1. Since at least the 2009-2010 award year, ITT failed to timely reconcile its Title IV, HEA program accounts;
2. Prior to August 27, 2015, ITT had no written policy or procedure in place to guide the reconciliation of Title IV funds; and
3. ITT has requested to reopen prior award years to correct additional reconciliation issues with a frequency substantially greater than that of comparable institutions.

In addition, in July, August, and September 2015, FSA staff worked with ITT to assist with the reconciliation of Title IV, HEA funds for award years 2009-2010 to present. During that time, ITT provided conflicting information regarding the status of the reconciliation of Pell Grant Award years 2010-11, 2011-12, and 2012-13 (the reconciliation of which should have been completed well before July 2015).

Taken together, these facts demonstrate a failure by ITT to meet its fiduciary obligations, to properly and timely reconcile Title IV program funds as per the regulations and Federal Student Aid guidance, and to meet the standards of administrative capability required of institution's participating in Title IV, HEA programs, *see, e.g.*, 34 C.F.R. §§ 668.16(a), (c)(1).

ADDITIONAL RESTRICTIONS

As a result of the facts set forth above, and as a condition of remaining on the HCM1 payment method, the Department is requiring ITT to take additional steps to identify unearned Title IV HEA funds under ITT's control, and provide additional documentation to the Department regarding Title IV, HEA funds administered and drawn by ITT on behalf of its students.

1. Cash Management / Disbursements

ITT will not be permitted to disburse Title IV funds to students or parents ten days prior to the first day of classes for a payment period, as provided for in 34 C.F.R. § 668.164(f)(1). Effective immediately, ITT may only disburse Title IV funds to a student or and parent once: (i) an academic term has begun; (ii) ITT has confirmed that the student has attended courses sufficient to justify the enrollment status which supports that student's Title IV eligibility; and (iii) ITT provides written confirmation to the Department, using the form and certification attached hereto as Exhibit A (hereinafter "Certification Form"), of the student's eligibility to receive Title IV funds. Certification Forms are to be submitted to the Department no more than once by main OPEID per seven-day period.

ITT must also retain all information on which it relies to substantiate the enrollment status of each student it believes to be eligible to receive Title IV funds. If ITT is unable to document that a student has commenced attendance in a term, it may not disburse funds to the student, and it must

revise the student's Title IV awards in accordance with the Department's published guidance. All other requirements of HCM1, 34 C.F.R. § 668.162(e)(1), shall remain in effect. Moreover, nothing stated in this condition shall change the requirement stated in 34 C.F.R. § 685.303(b)(5).

2. Student Disbursement Reporting

Effective immediately, the Department is modifying the requirements for ITT to submit a monthly enrollment roster. This requirement was established on May 20, 2015 and modified June 18, 2015. In particular, ITT must now include disbursement information when submitting the monthly roster in the format (and with the information requested) shown in the Excel file provided herewith. Additionally, ITT must submit a written certification attesting to the accuracy of that roster, and attesting to ITT's adherence to these requirements. The first roster submitted must include all disbursements and refunds made in the 30 days prior to the submission date of the roster. Each subsequent roster must include all disbursements and refunds made since the submission of the previous roster. Please see enclosed sample Disbursement Roster Spreadsheet.

The certification should be made by an individual with authority to bind ITT, and should state:

By submitting this information, I certify to the best of my knowledge and belief that the information contained herein is true, complete, and accurate. I further certify that ITT Educational Services, Inc. ("ITT") has verified the eligibility of each individual to receive a disbursement of the Title IV funds provided. I further certify that ITT did not disburse Title IV, HEA funds to or for the benefit of any student listed on this roster until ITT had verified that student's attendance in the payment period for which the disbursements was intended. I further certify that ITT is and will remain in compliance with the terms and conditions of the Program Participation Agreement under which these funds have been provided. I am aware that the provision of any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me and/or ITT to criminal, civil, or administrative penalties for fraud, false statements, false claims, or other violations. (U.S. Code Title 18, Section 1001; Title 20, Section 1097; and Title 31, Sections 3729-3730 and 3801-3812).

3. Additional Reporting Requirements

Effective immediately, on the first business day of each month, ITT must provide documentation to substantiate its reconciliation of all Title IV funds drawn as of the last day of the month preceding the month before the submission date. (For example, on November 2, 2015 ITT must submit documentation to substantiate its reconciliation of Title IV funds as of the last day of September, 2015; on December 1, 2015, ITT must submit documentation to substantiate its reconciliation of Title IV funds as of the last day of October, 2015.) The reconciliation documentation must provide evidence that ITT has reconciled the program accounts as described in the Department's publications, including Electronic Announcements dated December 18, 2014

and January 23, 2015.² Please submit such documentation to Byron Scott, Case Manager, via email at Byron.Scott@ed.gov, accompanied by a statement, signed by an individual with authority to bind the company, stating that:

By submitting this information, I certify to the best of my knowledge and belief that the information contained herein is true, complete, and accurate. I further certify that ITT is and will remain in compliance with the terms and conditions of the Program Participation Agreement under which Title IV, HEA funds have been provided. I am aware that the provision of any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me and/or ITT to criminal, civil, or administrative penalties for fraud, false statements, false claims, or other violations. (U.S. Code Title 18, Section 1001; Title 20, Section 1097; and Title 31, Sections 3729-3730 and 3801-3812).

4. Additional Reporting Requirement of Bank Conditions

ITT must submit to the Department a description of any conditions that have been established by any bank or other entity that are related to ITT's participation in the Title IV HEA programs. ITT must promptly supplement this report when any new conditions are established, or when any changes are made to the existing items that have already been reported. Please submit such documentation to Byron Scott, Case Manager, via email at Byron.Scott@ed.gov

5. Additional Reporting of Individuals with Institutional Authority

Within seven days of the date of this letter, ITT must submit to the Department a list of all individuals who have the authority to direct or otherwise control the payment of any "refund[s] of unearned institutional charges" to the Department, as that phrase is used in 20 U.S.C. § 1099c(e)(6)(B). Please submit such documentation to Byron Scott, Case Manager, via email at Byron.Scott@ed.gov

Protection of Personally Identifiable Information (PII):

Because responses to certain of the above conditions will contain PII, please note the following information. PII is any information about an individual that can be used to distinguish or trace an individual's identity (such as name, Social Security number, and date/place of birth). The disclosure of PII can result in substantial harm, embarrassment, and inconvenience to individuals and may lead to identity theft or other fraud. To protect PII, please see the enclosure Protection of Personally Identifiable Information (PII) for instructions regarding submission of documents containing PII.

² <http://ifap.ed.gov/eannouncements/121814TitleIVaidDisbureRptExcessCashReconciliRequirements.html> and <http://www.ifap.ed.gov/eannouncements/012315FederalPellGrantProgramReconciliation.html>

If you have any questions, please contact Byron Scott, Case Manager, by phone at 312-730-1534 or by email at Byron.Scott@ed.gov.

Sincerely,

(b)(6)

Michael Frola
Director, Multi-Regional and Foreign School Participation Division

Enclosures:

Example Student Disbursement Roster Certification form (soft copy provided under separate email)
Disbursement Detail and Summary Tracking Spreadsheet
Protection of Personally Identifiable Information

NB: SAMPLE Certification -- To be placed on ITT stationery

DATE: <date>
TO: U.S. Department of Education
FROM: <name>, as an authorized agent and representative of ITT Educational Services, Inc. ("ITT")
SUBJECT: ITT Student Disbursement Roster Certification covering the period <date> through <date>

On behalf of ITT Educational Services, Inc., I certify that, to the best of my knowledge and belief that:

- a) ITT will be making a disbursement of Title IV funds to students or parents on <date>. No disbursements are being made to or for the benefit of any student as to whom ITT has not confirmed that the student has attended courses sufficient to justify the enrollment status which supports that student's Title IV eligibility.
- b) ITT has retained all information on which it relies to substantiate the enrollment status of each student it believes eligible to receive Title IV funds.

By submitting this information, I certify to the best of my knowledge and belief that the information contained herein is true, complete, and accurate. I further certify that ITT has verified the eligibility of each individual to receive a disbursement of the Title IV funds and in the amount provided. I further certify that ITT is and will remain in compliance with the terms and conditions of the Program Participation Agreement under which these funds have been provided. I am aware that the provision of any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me and/or ITT to criminal, civil, or administrative penalties for fraud, false statements, false claims, or other violations. (U.S. Code Title 18, Section 1001; Title 20, Section 1097; and Title 31, Sections 3729-3730 and 3801-3812)

Authorized Signature: _____

Date: _____



November 16, 2015

Ms. Latanaya Johnson
Education Administrator | California Department of Veterans Affairs
California State Approving Agency for Veterans Education
1227 O Street, Suite 625
Sacramento, CA 95614

Dear Ms. Johnson:

This letter is to confirm that the ITT Technical Institutes listed below, operating as accredited private post-secondary institutions in California, are currently in compliance with the ACICS financial stability standards as set forth in the ACICS Accreditation Criteria, Section 3-1-203:

ITT Technical Institute
4000 West Metropolitan Drive Suite 10
Orange, CA 92868

ITT Technical Institute
2555 West 190th Street Suite 125
Torrance, CA 90504

ITT Technical Institute
16916 South Harlan Road
Lathrop, CA 95330,

ITT Technical Institute
650 West Cienega Avenue
San Dimas, CA 91773-2933

ITT Technical Institute
2051 Solar Drive, Suite 150
Oxnard, CA 93030-2699,

ITT Technical Institute
362 North Clovis Avenue
Clovis, CA 93612

ITT Technical Institute
10863 Gold Center Drive
Rancho Cordova, CA 95670

ITT Technical Institute
440 South Melrose Drive Suite 100
Vista, CA 92081-4321

ITT Technical Institute
670 East Carnegie Drive
San Bernardino, CA 92408

ITT Technical Institute
1140 Galaxy Way, Suite 400
Concord, CA 94520

ITT Technical Institute
401 Mile of Cars Way Suite 100
National City, CA 91950

ITT Technical Institute
4160 Temescal Canyon Road, Suite 100
Corona, CA 92883

ITT Technical Institute
12669 Encinitas Ave.
Sylmar, CA 91342

ITT Technical Institute
1200 Clay Street Suite 200
Oakland, CA 94612

This reflects the publicly disclosed information at www.acics.org>About Us>Directory of Institutions.
Please let me know if you need more information or would care to discuss.

Regards.

(b)(6)

A rectangular box with a black border, used to redact the signature of Anthony S. Bieda. The text "(b)(6)" is written in the top-left corner of the box.

Anthony S. Bieda
Vice President for External Affairs

Cc: Mr. Shawn Crawford, ITT technical Institutes

Mick Lindvay at HQ

From: Mick Lindvay at HQ
Sent: Monday, November 02, 2015 4:14 PM
To: Byron.Scott@ed.gov
Cc: michael.Frola@ed.gov; Steve.Finley@ed.gov; Kevin Modany at HQ; Rocco Tarasi III at HQ; Ryan Roney at HQ; Butner, Blain (b)(6)
Subject: ITT Educational Services, Inc. - Reconciliation Documentation
Attachments: ITT Certification for the Reconciliation of Title IV Funds drawn as of the last day of September 2015.pdf; ITTESI Title IV Reconciliation YTD through SEP-15.zip

Dear Mr. Scott,

Please find attached our first report of Title IV reconciliation documentation from ITT Educational Services, Inc. as requested in Michael Frola's letter of October 19, 2015. The following documents are included:

- ITT Certification for the Reconciliation of Title IV Funds drawn as of the last day of September 2015.
- ITTESI Title IV Reconciliation YTD through SEP-15 – **These files are encrypted. I will send you the password for the files in a separate e-mail.**

The encrypted file is large, if necessary it can be separated into multiple files and sent in several emails. Please confirm successful receipt or advise if you would like the file separated.

Please feel free to contact me if you have any questions.

Mick Lindvay
Senior National Director, Student Financial Services
ITT Educational Services, Inc.
317-706-9227
mlindvay@itt-tech.edu

Attachment #1

Shawn Crawford at HQ

From: Mick Lindvay at HQ
Sent: Saturday, November 07, 2015 3:04 PM
To: Shawn Crawford at HQ
Cc: Rocco Tarasi III at HQ
Subject: FW: 10082015 ITT meeting

Commentary and recap from 10/8 meeting, noting that we are fully reconciled for all prior award years.

Mick Lindvay
Senior National Director, Student Financial Services
ITT Educational Services, Inc.
(317) 706-9227

From: Davis, Barbara [mailto:Barbara.Davis@ed.gov]
Sent: Thursday, October 08, 2015 1:45 PM
To: Mick Lindvay at HQ
Cc: Scott, Byron; Holly Fisher at HQ; Richards, Allison; Jones, LaShae; Howell, Lisa; Sheri Nicoletti
Subject: RE: 10082015 ITT meeting

Recap of today's meeting
ITT is now fully reconciled for all prior award years.
We will continue short weekly touch point meetings for the time being.
Holly will send refund confirmation numbers to me directly, going forward
1415 pell should be closer to being fully reconciled for the award year next week.
I will send Mick a SULA report to assist with their data clean up.

Barbara Davis
Internal Controls Division (Funds Control)
(678) 721-4452 office
(b)(6)
barbara.davis@ed.gov

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ATTACHMENT #2

Attachment #3

INTENT OR PURPOSE

To provide guidance on the procedures for performing Title IV reconciliation.

SCOPE

ITT Educational Services, Inc., its operations and employees, including Headquarters, ITT Technical Institutes, etc. (hereinafter "Company", "ITT/ESI", or "ITT"), including all Directors of Finance ("DOF") and Financial Aid Coordinators ("FAC").

RESPONSIBILITY

Responsibility lies with the Senior National Director, Student Financial Services ("SND SFS"), Senior Accountant ("Accountant"), Finance Business Analyst ("Finance BA"), Field Finance Managers ("FFMs"), all College Directors, Directors of Finance ("DOFs") and Financial Aid Coordinators ("FACs").

GENERAL

A separate procedure is dedicated to Title IV reconciliation. Title IV reconciliation is the process by which a school reviews and compares Title IV aid (grants, loans, and Campus-Based aid) it has received from the U.S Department of Education ("ED") Grant Management ("G5") system that it has disbursed to students and are recorded on ED's Common Origination and Disbursement ("COD") system with actual disbursement records in the school's internal records. ITT's reconciliation is initiated with ITT's internal reconciliation process. The process is completed by comparing the financial aid awards, origination, and scheduled disbursement records in Smart Forms ("SMF") and accounting records in the Student Billing System ("SBS"). These internal records are then compared to disbursements in COD and records of requested funds received and funds that have been returned via the G5 system.

Through reconciliation, disbursement and cash discrepancies are identified and resolved in a timely manner to ensure the school meets all regulatory requirements. Schools must document their reconciliation efforts and retain this documentation for auditing purposes.

PROCEDURE

The SND SFS is the coordinating official and is responsible for the overall completion and success of the Title IV reconciliation process.

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ITT Educational Services, Inc.

PROCEDURE MANUAL

**FINANCE
TITLE IV RECONCILIATION
C 34.0**

Procedure Owner: Finance

Internal Reconciliation Process

ITT completes internal reconciliation on each drawdown to ensure that what is posted to each student's account (SBS), the amount of each disbursement and date of each disbursement, matches exactly the data in SMF; that net drawdowns equal net accepted and posted disbursements; that cash is not being held beyond cash management requirements; and that internal cash transactions (drawdowns, refunds of cash and adjustments) match the ITT's bank statements.

Steps for Internal Reconciliation

Responsible Parties

1. The Finance BA is responsible for generating reports from SMF and SBS and working with the FFMs to resolve any discrepancies in data in the SBS and COD reconciliation process.
2. The FFMs are responsible for managing G5 drawdowns, return of cash, and any adjustments as well as student accounts in SBS.
3. The campus FACs works with the DOFs and the FFMs to resolve any discrepancies in data in the SBS and SMF reconciliation process.
4. The Accountant and the SND SFS complete a final review and approval of reconciliation and maintain documentation as required by federal Title IV record retention guidelines.

Reconciliation Process/Practices

Internal reconciliation is the matching of business office, financial aid office, and accounting data with SMF origination and SBS disbursement data for Title IV funds (Pell, Campus Based and Direct Loans).

The financial aid (SMF) and accounting (SBS) systems are internally reconciled on a daily basis to ensure that the proper amount of Title IV funds is disbursed to each recipient. Discrepancies between the financial aid (SMF) and accounting (SBS) systems appear on the Pell Matrix and Direct Loan ("DL") Matrix spreadsheets that are generated daily by the Finance BA. The FFMs with assistance from the Finance BA reviews and resolves any discrepancies each business day to ensure that accurate information based on student eligibility is reported in both systems. The matrix spreadsheets identify the count and amount of Title IV that did not successfully disburse or post to SBS. Error messages or reject reasons are grouped by category, such as Estimated, Pending Release, Rejected, Pending Release Rejected, and Account Posting Rejected. Each of these categories is then expanded to view the individual student account detail. The student account detail includes information about each student account, consisting of the award year, campus location, student's first and last names, GUID (ITT's internal student identification number), ISIR status, and disbursement fund type, disbursement date, disbursement amount, and disbursement status. The Finance BA and FFMs troubleshoot and resolve all discrepancies displayed on the Pell Matrix and Direct Loan Matrix with assistance from the campus DOFs.

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External Reconciliation Process

ITT completes external reconciliation on each drawdown to ensure that what is posted to each student's account (SBS) the amount of each disbursement and date of each disbursement, matches exactly the data in (SMF) and COD; that net drawdowns equal net accepted and posted disbursements; that cash is not being held beyond cash management requirements; and that internal cash transactions (drawdowns, refunds of cash and adjustments) match the ITT's bank statements.

Steps for External Reconciliation

Responsible Parties

1. The Finance BA is responsible for the export and import of reports received from COD and working with the FFMs to resolve and discrepancies in data in the SBS and COD reconciliation process.
2. The FFMs are responsible for managing G5 drawdowns, return of cash, and any adjustments as well as student accounts in SBS.
3. The campus FACs works with the DOFs and the FFMs to resolve any discrepancies in data in the SBS and COD reconciliation process.
4. The Accountant and the SND SFS complete a final review and approval of reconciliation and maintain documentation as required by federal Title IV record retention guidelines.

Reconciliation Process/Practices

External Reconciliation is the process that compares the reconciled internal disbursement and cash balances from the SMF and SBS with disbursements and cash balances from COD on a cumulative and individual basis.

SMF tracks in real time the receipt of COD messaging that indicates the success of a disbursement or adjustment update to confirm successful posting in COD, or identifies a reject that requires review and resolution. These COD rejects are reviewed by the Finance BA and the FFMs on a daily basis to identify and resolve any reconciling items.

Every week, the Finance BA will generate the COD reports identified below displaying all Title IV disbursement and adjustment activity by program. For the Direct Loan ("DL") program, the Finance BA will retrieve the School Account Statement ("SAS") Disbursement Detail on Demand report. This report details all disbursement and adjustment activity that has been successfully recorded in COD during the prior week. This report details the award year, Direct Loan ID, School ID, Student's First and Last Names, Student's Social Security Number ("SSN"), Loan Type, Award ID, Post Date, Booked Date, Disbursement Date, Disbursement Number, Disbursement Sequence Number, Gross Amount, Fee Amount, Rebate Amount, Net Amount, and Net Disbursement Amount. For the Federal Pell Grant ("Pell") program, the Finance BA will request the Pell Grant Reconciliation Report ("PGRC") for the prior week's activity. This report displays the Student's

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ITT Educational Services, Inc.

**FINANCE
TITLE IV RECONCILIATION
C 34.0**

PROCEDURE MANUAL

Procedure Owner: Finance

First and Last Names and Middle Initial, the Student's current SSN, and the Year to Date ("YTD") Disbursement Amount.

After the drawdown or return of funds has been completed based on disbursement and adjustment activity successfully recorded in COD, the Finance BA will perform a complete reconciliation of the COD data against the internal data stored in SBS. The Title IV external reconciliation process consists of extracting Title IV disbursements, returns and manual adjustment data from SBS via a SQL query. This data file contains student SSN, Student Name, GUID (ITT's internal student identifier), and transaction type and amounts. This data is placed in an Access database. These amounts are consolidated into a net number to determine the net disbursement amount by student. The files are compared by matching SSN to identify discrepancies between the net disbursement amounts in SBS and the net disbursement amounts as reported on the COD reports. Net disbursement discrepancies are researched to identify transaction rejects at COD or necessary corrections required to be made ITT disbursement information. The complete reconciliation process will be performed weekly. Any discrepancies identified between SBS and COD will be reviewed and resolved that week, so that any necessary adjustments made to COD will then be reflected on the following week's COD Direct Loan SAS Report and Pell Grant Reconciliation Report. The SND SFS, Accountant, and Finance BA will meet weekly to discuss that week's G5 activity and confirm the successful and complete identification and resolution of all reconciling items, which includes the verification of (1) the ending account balances in COD and G5 agrees with the general ledger, (2) ending account balances are substantiated with supporting documents (3) all activity is appropriate and reasonable, (4) all adjustments and corrections, if necessary, have been initiated (or completed) and (5) that ITT maintains documentation as required by federal Title IV record retention guidelines.

Monthly Reconciliation Process

Each month, at the end of each month after internal reconciliation, the Finance BA will retrieve the Direct Loan SAS monthly generated report and request a YTD COD Report for Pell and then will perform a complete reconciliation of the COD data for that previous month against the internal data stored in SBS to ensure and document reconciliation on a monthly basis. Any discrepancies identified between SBS and COD data will be reviewed and resolved. The SND SFS, Accountant, and Finance BA will meet to review the results of this monthly reconciliation to confirm its success and completion. Monthly reconciliation will be documented to demonstrate compliance with federal regulations. This process includes the verification that (1) the ending account balances in COD and G5 agrees with the general ledger, (2) ending account balances are substantiated with supporting documents (3) all activity is appropriate and reasonable, (4) all adjustments and corrections, if necessary, have been initiated (or completed) and (5) that ITT maintains documentation as required by federal Title IV record retention guidelines.

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ITT Educational Services, Inc.

PROCEDURE MANUAL

**FINANCE
TITLE IV RECONCILIATION
C 34.0**

Procedure Owner: Finance

Final Year Reconciliation and Close Out

The Year-End closeout is the final reconciliation of all ITT's information in the COD system that brings the Ending Cash Balance to \$0 for the award year for each of the Title IV programs. ITT's schedule is to complete the final reconciliation and Close Out within two months of the final disbursement of funds but no later than on or before the established federal deadlines.

Prior to closing the award year at the end of September of the same year for Pell and at the end of July of the following year for DI., the Finance BA will request a YTD COD Report for both DL and Pell that contains the information recorded in COD for the entire award year. ITT completes the final year reconciliation by following the same steps above for the monthly reconciliation process using the YTD COD data (COD SAS report and COD PGRC report) and YTD SBS queries. YTD COD data will then be reconciled against an YTD SBS query to ensure that all internal records are properly recorded in COD. The SND SFS, Accountant, and Finance BA will meet to review the results of this YTD reconciliation prior to award year close out to confirm the successful and complete reconciliation of the entire award year. This process includes the verification that (1) the ending account balances in COD and G5 agrees with the general ledger, (2) ending account balances are substantiated with supporting documents (3) all activity is appropriate and reasonable, (4) all adjustments and corrections, if necessary, have been completed and (5) that ITT maintains documentation as required by federal Title IV record retention guidelines.

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Attachment #4

INTENT OR PURPOSE

To provide guidance on the procedures for the delivery and management of Title IV HEA program funds.

SCOPE

ITT Educational Services, Inc., its operations and employees, including Headquarters, ITT Technical Institutes, etc. (hereinafter "Company", "ITT/ESI", or "ITT"), including all Directors of Finance ("DOF") and Financial Aid Coordinators ("FAC").

RESPONSIBILITY

Responsibility lies with the Senior National Director, Student Financial Services ("SND SFS"), Senior Accountant ("Accountant"), Finance Business Analyst ("Finance BA"), Field Finance Managers ("FFMs"), all College Directors, Directors of Finance ("DOFs") and Financial Aid Coordinators ("FACs").

GENERAL

A separate procedure is dedicated to the delivery of Title IV HEA program funds to eligible students. The delivery of funds include; the management of the drawdown of Title IV funds; the disbursement of Title IV funds to eligible students and parents, the adjustment of Title IV funds disbursements and the return of cash related to Title IV disbursements and adjustments. The Title IV program funds covered by this procedure are Pell Grant, Federal Supplemental Educational Opportunity Grant, Iraq and Afghanistan Service Grant, Federal Work-Study, Direct Unsubsidized Loan, Direct Subsidized Loan and the Direct PLUS program. Except for funds received for an administrative cost allowance (ACA) or for a Job Location and Development Program under the Federal Work-Study (FWS) Program, all FSA program funds received by a school are held in trust by the school for students and the U.S. Department of Education (ED). As a trustee of those funds, a school may not use (or use as collateral, a.k.a. hypothecation of funds) FSA funds for any other purpose. To ensure adequate cash management practices, a school must have in place a cash management system that adheres to Title IV HEA program regulations and other rules and standards.

PROCEDURE

The awarding of Title IV program funds and adjustments to disbursements are initiated at the school by the FAC or DOF during the financial aid packaging process and regular review of a student's eligibility, enrollment status and registration activity. Title IV awards are originated in

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ITT Educational Services, Inc.

PROCEDURE MANUAL

**FINANCE
TITLE IV DISBURSEMENT AND CASH
MANAGEMENT
C 35.0**

Procedure Owner: Finance

Smart Forms ("SMF") and are scheduled for disbursement based on the student's eligibility as documented on the Institutional Student Information Record ("ISIR"), the student's anticipated enrollment status, scheduled and accepted financial aid awards as documented on the Cost Summary and Payment Addendum to the Enrollment Agreement ("CSPA") which serves as the school's award letter, and the student's registration activity.

On the scheduled disbursement date after the financial aid management system's verification of student eligibility for scheduled awards using programmed business rules and edits, SMF will post the Title IV program funds disbursement transaction in the Student Billing System ("SBS") and credit the disbursements to the student's account. After posting the Federal Pell Grant or Iraq and Afghanistan Service Grant and Direct Loan Title IV disbursement transaction to SBS, SMF will automatically in real time export the Title IV program funds disbursement information for the Federal Pell Grant or Iraq and Afghanistan Service Grant and Direct Loan programs to ED's Common Origination and Disbursement ("COD") system so it is properly recorded within the regulatory timeframe of 15 days from the date the Title IV funds were credited to the student's account.

After any Title IV program disbursement is made or finance personnel becomes aware of the need to adjust a student's previously reported disbursement, an adjustment may be initiated by SMF or by an action request from the FAC or DOF to the FFMs at ITT/ESI Headquarters ("HQ") in SBS or the Cash Input Web ("CIW") system. The adjustment to the disbursement must be based on changes in a student's eligibility, changes in a student's registration activity, changes in a student's account activity such as the resolution of Title IV credit balances, the student's request informing the College that he/she no longer wants or needs funds, or the completion of the Return to Title IV Funds ("R2T4") calculation. Disbursement adjustments that are manually initiated by an action request are reviewed and approved by the FFMs or Accounting staff at HQ. The approval of a manually initiated disbursement adjustment will trigger the posting of the adjustment by the SMF system. The disbursement adjustment is posted to the student's account in SBS by the SMF system and then transmitted automatically in a daily batch process to COD by the system so the disbursement adjustment is properly recorded within the regulatory timeframe of 15 days from the date the finance personnel became aware of the need to adjust the Title IV disbursement. SMF tracks the receipt of COD messaging that indicates the success of the disbursement adjustment update to confirm successful posting, or to identify a "reject" that requires review and resolution by the College. The FFMs at HQ are responsible for monitoring and managing Title IV disbursements and adjustment activities. Manual Title IV disbursements adjustments entries by the FFMs are reviewed by Accounting staff at HQ using risk-based selection criteria.

SMF tracks the return messaging from COD to identify Title IV disbursements that are successfully recorded. This information is available on demand in the SBS Title IV Disbursement report. The Title IV Disbursement report displays the counts and amounts of disbursements successfully

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ITT Educational Services, Inc.

PROCEDURE MANUAL

**FINANCE
TITLE IV DISBURSEMENT AND CASH
MANAGEMENT
C 35.0**

Procedure Owner: Finance

recorded in COD and details information about each successfully recorded disbursement, including the award year, Title IV program, campus location, student's first and last names, GUID (ITT's student identifier), COD posting date and disbursement information, and SBS posting date and disbursement information. Disbursement activity is then subtotaled for each Office of Postsecondary Education Identification ("OPEID"). Additionally, the internal SBS system records all adjustments to Title IV disbursements that represent a return of funds as initiated by SMF or an approved action request from the FAC or DOF. This category of disbursement adjustment detail is displayed on the Pell Electronic Refund Listing and the Preliminary Payment Register for Direct Loan Refunds ("Title IV Adjustment reports"), and includes the award year, Title IV program, location, student's first and last name, GUID, and adjustment date and amount. The Accountant at HQ will then review the Title IV Disbursement report and Title IV Adjustment reports and drawdown or return Title IV funds as required. If there are both disbursements and adjustments recorded in the applicable time frame, the activity will be netted with a single Title IV drawdown or return of funds.

Title IV disbursements and adjustments that successfully post in COD are reflected in the school's Net Accepted and Posted Disbursements ("NAPD") total. This NAPD total balance is compared against the school's Current Funding Level ("CFL") and current cash balance ("Cash") based on draws of cash ("drawdowns") and returns of cash ("returns") initiated in ED's Grant Management ("G5") system. The drawdown and return activity is based on internally reconciled Title IV disbursements and adjustments that have been transmitted to COD as identified in the Title IV Disbursement report and Title IV Adjustment reports. In order to ensure that all returns are processed timely, the Accountant at HQ is responsible for monitoring the discrepancy between the Cash total balance and the NAPD total balance ("Cash > NAPD"). A zero indicates that the total cash balance exactly equals the recorded NAPD. If the ending cash balance is a negative number, it represents a total cash amount that is less than NAPD and so a drawdown of Title IV funds would be substantiated. If the ending cash balance is a positive number, it represents a total cash amount that exceeds NAPD and so a return of Title IV funds would be required.

If a positive Cash > NAPD balance exists for three consecutive business days, the Title IV Disbursement report, Title IV Adjustment reports, and the G5 activity will be reviewed to ensure that the return has been already processed, the return is immediately initiated if not yet processed and is required based on disbursements or adjustments reflected in the Title IV Disbursement and Title IV Adjustments reports, or adjustments are immediately entered in COD based on disbursements or adjustments reflected in the Title IV Disbursement and Title IV Adjustments reports.

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ITT Educational Services, Inc.

PROCEDURE MANUAL

**FINANCE
TITLE IV DISBURSEMENT AND CASH
MANAGEMENT
C 35.0**

Procedure Owner: Finance

Pursuant to federal regulation, 34 CFR 668.24(b)(2) and 34 CFR 668.24(c)(1)(iv), the Title IV Disbursement report and Title IV Adjustment reports are maintained on a current basis, by program to document the disbursement and delivery of Title IV program funds and to establish financial fiscal records that reflect each Title IV program record and to document each student's and or parent's receipt of Title IV program funds. These records are stored electronically and partially in hardcopy at HQ.

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GIBSON DUNN

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Los Angeles, CA 90071-3197
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Timothy J. Hatch

(b)(6)

T 43202-00079

CONFIDENTIAL

October 16, 2015

VIA UPS OVERNIGHT

Jason Mehta,
Assistant United States Attorney
U.S. Department of Justice
300 North Hogan Street, Suite 700
Jacksonville, FL 32202

Re: September 9, 2015 CID to ITT Corporation, Second Production

Dear Mr. Mehta:

In response to the Civil Investigative Demand ("CID") issued by the United States Department of Justice to ITT Educational Services, Inc. ("ITT") on September 9, 2015, enclosed please find an encrypted disc with documents bearing Bates Numbers ITTDOJCID0000822-981. The password for the encrypted disc has been sent to you by e-mail at Jason.Mehta@usdoj.gov. This is an ongoing production, which ITT will supplement based on our continuing dialogue with you.

This production consists of compensation and performance evaluation data for Representatives and Financial Aid Coordinators at the ten schools selected by you for sampling for the time period from 2010-2015. Specifically, the production includes data for the schools located in Wyoming, MI; Everett, WA; Louisville, KY; Durham, NC; Murray, UT; Chantilly, VA; Wilmington, MA; Fort Lauderdale, FL; Springfield, MO; and Orland Park, IL.

You will find two Excel files for each school location. The first file shows compensation data for that location in 2010-2011, prior to the most recent changes to the compensation regulation. The second file shows compensation data for 2012-2015, which follows the Department of Education's changes to the compensation regulation.

As you will see from reviewing this data and the other documents ITT has produced, following the changes in the Department of Education's compensation regulation, ITT no longer adjusts the compensation of Representatives and Financial Aid Coordinators even in part based on the number of students they enroll or assist in obtaining financial aid. Rather, except for a handful of reasons not relevant to the investigation (i.e., moving to a higher cost area, transfers, rehires) the salaries of Representatives and Financial Aid Coordinators may

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only be adjusted for: (i) an annual Cost of Living Component (“COLC”) adjustment, or (ii) a voluntary Career Ladder Component. A Career Ladder adjustment applies only if an employee elects it, and eligibility is based solely on an employee’s tenure at ITT (as is eligibility for the COLC adjustment). (See Employee Relations Salary Administration Policy ER 1.0, ITTDOJCID0000546-554, 564-584.)

A description of the data follows.

A. Pay Adjustment Data

In the “Pay Adjustment” tab, you will find a list of all employment related actions relating to each employee during the relevant time period, including but not limited to when they were hired, any promotions, transfers to another school, leaves of absence, and so on. To the extent the employee received any pay adjustment associated with the action, (such as for a COLC or Career Ladder Component adjustment), you will find the corresponding pay adjustments in this tab as well.

Column I in this tab lists the action or change that was taken with respect to each employee (e.g., transfer, rehire, leave of absence, pay adjustment, etc.). Columns G and K explain the “action” and “reason” for each entry. If there was a pay adjustment for an employee, it is listed in Column L. As explained in the documents previously produced, the Salary Administration Guidelines for each year prescribe the range of COLC and Career Ladder Component adjustments depending on an employee’s tenure. (See ITTDOJCID0000585-586, 588-589.) And the “Key” tab contains explanations for all of the codes used in the “Pay Adjustment” tab.

In the “Pay Adjustments” tab, the pay adjustment associated with an action (such as a Career Ladder Component adjustment) is listed on its own line, separate from and additional to any corresponding action or reason; the action or reason is listed separately (without an indication of there being an associated pay adjustment). This is simply a reflection of how ITT stores this information, and the data is easily understandable once this is recognized. So, for example, if an employee elects a Career Ladder change with a concomitant pay adjustment increase, you will find: (i) an entry with an action/reason code for “Career Ladder Component,” which will have a zero for the pay change percentage; and (ii) on or around the same date, a second entry with an action/reason code for “Adjustment” and a corresponding percentage in the pay change percentage column.

Additionally, it is important to note that if an employee receives an adjustment as a result of a Career Ladder Component, that same employee will not receive a separate COLC change because COLC is already included in the Career Ladder Component change. If, however, an

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employee receives only a COLC change and no other pay adjustment that year, there will be only one entry for Action Code "PAY" and Reason Code "ADJ."

B. Salary and Performance Planning and Evaluation Data

In the "Salary and PPE" tab, you will find data regarding the employees' salaries and other earnings, as well as their Performance Planning and Evaluation ("PPE") ratings each year. In this tab, you will find one entry per employee per year for PPE, total earnings, and all components contributing to total earnings. The earnings data show all of the financial components that make up each employee's total earnings for the year (e.g., regular earnings, overtime, bereavement pay, etc.).

Importantly, and as outlined in ITT's policies, the PPE rating is not used to adjust or determine an employee's salary or other earnings for the current year or future years. Instead, it is used to monitor employees' fulfillment of the expectations of their positions and to identify areas for further improvement and ongoing mentoring. ITT provides the PPE data here to illustrate the lack of connection between an employee's PPE rating and his or her salary. As you will see, the two are not connected. The PPE rating and what goes into that rating is further explained in the Representative and Financial Aid Coordinator Performance Plans (ITTDOJCID0000335-351, 397-465, 474-505, 529-545), and in the Employee Relations Performance Management Policy ER 27.0 (ITTDOJCID0000682-710).

C. Separations

In the "Separations" tab, you will find data regarding campus employees who left the company during 2012-2015, including both voluntary and involuntary separations. Column G describes the reason for the separation. If the description begins with "V," the employee voluntarily left the company. If the description begins with "IV," the company terminated the employee's employment involuntarily.

D. Explanation of Specific Examples

As you will see, there are a handful of pay adjustments in the data that may appear to be outside the ranges prescribed in the Salary Administration Guidelines. For the reasons described below, they are not.

1. Prorated Cost of Living Component

COLC adjustment amounts may be prorated if an employee worked fewer than 12 months (or more than 12 months, but had not received an adjustment in the prior year). For example, if an employee was hired only six months before the pay adjustment date, his or her pay

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adjustment will be prorated downwards and will be less than the amount listed for their tenure. On the other hand, if an employee has not received a pay adjustment for over 12 months, his or her COLC will be prorated upwards to reflect the additional time that has passed and will be greater than the amount listed for their tenure in the Salary Administration Guidelines (ITTDOJCID0000585-586, 588-589).

For example:

- (b)(6) (Murray, UT) received a COLC adjustment of 2.15% in June 2012, even though the COLC amount listed in the 2012 Salary Administration Guidelines for an employee with two years of tenure was 2.0%. (ITTDOJCID0000588.) Burton received a prorated COLC slightly more than the 2.0% amount because his last pay adjustment was over a year earlier in May 2011.
- (b)(6) (Murray, UT) received a COLC adjustment of 3.49% in June 2012, even though the COLC amount corresponding to her level of tenure was 3.25%. (ITTDOJCID0000588.) Jeppsen's COLC was prorated because her last pay adjustment was over a year earlier in May 2011.

2. Geographic Differential Component

As the Salary Administration Guidelines make clear, each school is designated as either a salary grade "A" or "B" school. Employees at salary grade "B" schools have higher relative salaries than employees at salary grade "A" schools. (ITTDOJCID0000595-596, 811-815, 818, 821.) These differences reflect the higher cost of living in certain cities and areas. As a result, when an employee transfers between an A location and a B location, "the employee's next annual pay adjustment may include a Geographic Differential Component that increases or decreases the employee's regular base pay rate by an amount equal to the difference between the minimum of the salary range at the new location compared to the prior location." (Employee Relations Salary Administration Policy ER 1.0, ITTDOJCID0000546-554, 564-584.) For example:

- (b)(6) (Wilmington, MA) received a pay adjustment of 12.5% in August 2013. The total adjustment amount included a 7.5% Geographic Differential Component based on his April 2013 location transfer from an A location (Jacksonville, FL) to a B location (Wilmington, MA). It also included a 5% Career Ladder Component.
- (b)(6) (Chantilly, VA) received a 10.18% pay adjustment in June 2012. The total adjustment amount included a 7.5% Geographical Differential Component based

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on his January 2012 location transfer from an A location (Mobile, AL) to a B location (Chantilly, VA). It also included a 2.68% prorated COLC.

3. Rehires

ITT occasionally rehires former employees. According to Employee Relations Salary Administration Policy ER 1.0 (ITTDOJCID0000546-554, 564-584), “[a] former employee who is reemployed by ITT/ESI in the same position within less than a year after his or her termination will receive a base pay rate no higher than the base pay rate that the former employee earned prior to his or her termination of employment plus any Cost-of-Living Component the employee would have received had he or she remained employed by ITT/ESI.” If ITT rehires a former employee more than a year after he or she left employment, the former employee’s new salary is determined using the same standards as any other “new hire.” Regardless of the timing of the rehire, it is listed in the system as a “Pay Correction,” simply as a function of how the data is tracked.

For example, (b)(6) (Murray, UT), left the company in May 2011 and was rehired in July 2013. The system indicates a “Pay Correction” of 11.93%. Robbins’ 2013 salary was determined based on the standards for establishing pay for new hires, outlined in ER 1.0 Employee Relations Salary Administration Policy (ITTDOJCID0000546-554, 564-584). She also left the company as a Representative and was rehired as a Representative Senior 1—a higher position on the Representative career ladder.

4. Delayed Pay Adjustments

As outlined in Employee Relations Salary Administration Policy ER 1.0 (ITTDOJCID0000546-554, 564-584), Representatives and Financial Aid Coordinators receive a maximum of one pay adjustment per calendar year. There are certain situations when there is an employment action that would otherwise prompt a pay adjustment for that year (e.g., a Career Ladder Component or change in position), but the employee already had a pay adjustment in the same calendar year. In that situation, the employee does not receive another pay adjustment in the same calendar year. For example:

- (b)(6) (Murray, UT) changed positions from a Secretary to a Financial Aid Coordinator in July 2012. A Financial Aid Coordinator is in a higher salary grade than a Secretary. Because she had received a pay adjustment in February 2012 as a Secretary, she did not receive another pay adjustment when she changed positions in July. She left the company before the next pay adjustment date in 2013.
- (b)(6) (Wilmington, MA) changed positions from a Representative to a Community Relations Specialist in November 2011. A Community Relations

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Specialist is a higher salary grade than a Representative and Mr. Angelo received a pay adjustment for that position change in February 2012. Mr. Angelo then changed positions back to a Representative in December 2012. He did not receive a downward pay adjustment at the time of this position change because he already received a pay adjustment in the same calendar year. He left the company before the next pay adjustment date in 2013.

The documents on the enclosed disc contain sensitive and confidential business information. Given that the documents produced through this and other productions contain confidential commercial, financial, or personal information, ITT respectfully requests that the Government afford all of these materials confidential treatment for purposes of the Freedom of Information Act, 5 U.S.C. § 522, and any other applicable statute or Government policy. In the event the Government plans to produce this sensitive information to any third party, ITT respectfully requests sufficient notice of the Government's intent so that ITT has an opportunity to appropriately protect this information for the benefit of its employees, students, graduates, and itself.

The documents and information produced are not to be construed in any manner as a waiver of any privilege that otherwise would be available to ITT or any other person or entity. ITT reserves the right to request the immediate return of any privileged documents or information inadvertently produced with this letter.

We look forward to a continued dialogue with you about this matter, as we believe that the facts will show ITT's compliance and resolve any concerns you might have.

Sincerely,

(b)(6)

Timothy J. Hatch

TJH/anl
Enclosure

cc: Daniel Zibel, U.S. Department of Education

102009300

November 9, 2015

Anthony S. Bieda
Vice President of External Affairs
Accrediting Council for Independent Colleges and Schools
750 First Street, NE, Suite 980
Washington, DC 20002-4223

RE: ITT Technical Institute – Adverse Action Update

Dear Mr. Bieda:

The ITT Technical Institutes have an established record of compliance with the *Accreditation Criteria*, including Sections 1-2-100, 2-2-152, 3-1-434, 3-1-200, 3-1-202, 3-1-303. In response to your October 28, 2015 request for additional restrictions on our access to Federal Student Aid and the Civil Investigate Demand received from the U.S. Department of Justice regarding our compliance with regulations regarding compensation, the following responses are being provided:

(1) An explanation of the basis for the findings of the U.S. Department of Education.

1(a). Since at least the 2009-2010 award year, ITT failed to timely reconcile its Title IV, HEA program accounts.

The U.S. Department of Education (“ED”), as part of the additional reporting requirements described in its October 19, 2015 letter, is now requiring us to provide evidence on a monthly basis of the continued reconciliation status for all open award years. On November 2, 2015, we reported and documented to the ED that we have fully reconciled, for each individual student account, the Title IV disbursements for all of its main campuses for the currently open award years. [Attachment #1]

With respect to the prior award years, since at least the 2009-2010 award year, we performed activities intended to reconcile the amounts that were recorded on our internal records with amounts submitted to and drawn down from ED. We subsequently learned that those activities were not completed properly or completely, and we no longer employ the individuals who were previously responsible for the proper reconciliation of these accounts.

Following this discovery, we immediately set about to review and reconcile the student account balances for each identified award year. From July 14, 2015, to September 30, 2015, we diligently worked in frequent collaboration with the ED to fully reconcile these accounts. No students were negatively impacted by the reconciliation activity, as no student loan balances were increased for any closed award year.

Significantly, this reconciliation activity resulted in making adjustments to the amount of Title IV funds recorded as disbursed to certain student accounts either in our system or ED’s system. The total amount of adjustments made to reconcile student accounts were not material to the overall amounts disbursed for each closed award year as noted in the following table:

Award Year	% of Adjustments to Net Disbursements
2009-10 Pell	0.04%
2010-11 Pell	0.02%
2011-12 Pell	0.02%
2012-13 Pell	0.01%
2013-14 Pell	0.01%
2011-12 DL	0.01%
2012-13 DL	0.00%
2013-14 DL	0.01%

On October 8, 2015, Barbara Davis of the ED's Internal Controls Division (Funds Control), confirmed via email that, "ITT is now fully reconciled for all prior award years." [Attachment #2].

1(b). Prior to August 27, 2015, ITT had no written policy or procedure in place to guide the reconciliation of Title IV funds.

Our institutions have consistently focused on maintaining the highest level of compliance with laws and regulations, and we maintain a robust process for the creation, review, approval, communication, and training on policies and procedures across all areas of our business. In fact, we currently have more than 240 published policies and procedures, of which at least 46 relate to our financial aid process.

Prior to August 27, 2015, we did not have a written policy specifically related to the reconciliation of Title IV balances between our records and the ED. Subsequently, however, we have drafted two new procedures designed to address ED's findings – FIN C 34.0, Title IV Reconciliation and FIN C 35.0 Title IV Disbursement and Cash Management. [Attachments #3 and 4].

These drafts were submitted to Barbara Davis via email on October 15, 2015 for ED's review and approval. We are working collaboratively with ED and outside counsel to finalize these procedures. Once approved by ED, we will immediately implement these procedures in their entirety.

1(c). ITT has requested to reopen prior award years to correct additional reconciliation issues with a frequency substantially greater than that of comparable institutions.

As described above, we requested that ED reopen prior closed award years wherever an adjustment was required to be made to student disbursement amounts. We have completed all additional reconciliation issues for prior years, and are now reporting all reconciliation activity for the current award years on a monthly basis to ED. As a result, under the current process, there will not be any further reconciliation issues that our institution cannot immediately address.

(2) Detailed remedies undertaken, if any, by ESI to remedy the findings and to bring the institution's administration of Federal Student Aid in compliance with Sections 3-1-434, 3-1-200, 3-1-202 and 3-1-303 of the ACICS Accreditation Criteria.

As part of our response to the above request from ACICS for an explanation of the basis for the ED's findings, we provided a thorough description of the detailed remedies we have undertaken to remedy those findings, and to demonstrate that our institution is fully in compliance with Sections 3-1-434, 3-1-200, 3-1-202 and 3-1-303 of the ACICS Accreditation Criteria.

We will continue to keep ACICS apprised of any material developments, and will continue our practice of copying ACICS on all related and relevant communications between our institution and ED.

(3) An explanation of the circumstances that led to the Department of Justice's Civil Investigative demand (sic) regarding compensation paid by ESI to admission and recruitment personnel.

Although we do not know exactly why DOJ issued the Civil Investigative Demand ("CID"), it is possible, if not likely, that it was issued because an individual plaintiff, called a "relator," has filed a False Claims Act ("FCA") lawsuit under the qui tam provisions of the FCA.

Pursuant to the statute, the lawsuit would be filed under seal to give the government an opportunity to investigate the allegations and make a decision with regard to whether or not to intervene in the lawsuit. When the government completes its investigation and makes its intervention decision, the lawsuit will be unsealed and the DOJ (in the

Mr. Anthony Bieda
November 9, 2015
Page 3

event it intervenes) or the relator (in the event the DOJ declines to intervene) would serve the company with the complaint.

In light of the plethora of FCA lawsuits against for-profit schools over the past decade, there is a strong chance that this is the reason why the CID was issued. It is also possible, however, that the CID was issued as part of an investigation that the government initiated on its own.

As with all other matters, we will continue to keep ACICS apprised of any material developments with respect to the CID received from the DOJ.

(4) ESI's response to the DOJ's CID.

Attached please find a copy of the response letter dated October 16, 2015 submitted by Gibson Dunn on behalf of our institutions. [Attachment #5].

Our institution is fully cognizant of the two types of activities subject to the ED's ban on incentive compensation – securing enrollment (recruitment) and securing financial aid. We are also aware that ED considers payments to persons or entities that undertake or have responsibility for recruitment and decisions related to securing financial aid as subject to the incentive compensation ban even if their work also includes other activities.

As a result, following changes to the ED's compensation regulation effective July 2012, our institution no longer adjusts the compensation of Representatives and Financial Aid Coordinators even in part based on the number of students they enroll or assist in obtaining financial aid.

In closing, we would like to formally offer to make available, either via telephone or in person, members of our executive and senior management to ACICS and/or the Council to respond to any further concerns or questions relating to our institutions.

Also, if you require any additional information to supplement the above response, please let me know.

Very truly yours,

(b)(6)

Shawn J. Crawford
SVP, Chief Compliance Officer



October 28, 2015

ID Code 00015354

VIA E-MAIL ONLY

Mr. Shawn J. Crawford
SVP, Chief Compliance Officer
ITT Educational Services, Inc.
13000 North Meridian Street
Carmel, IN 46032

Dear Mr. Crawford:

The Council has been informed that ITT Educational Services, Inc., is subject to additional restrictions on its access to Federal Student Aid, an action taken by the U.S. Department of Education due to alleged “failure by ITT to meet its fiduciary obligations, to properly and timely reconcile Title IV program funds as per the regulations and Federal Student Aid guidance, and to meet the standards of administrative capability required of institution’s participating in Title IV, HEA programs.”

Furthermore, the Council has received information that ESI is the subject of a Civil Investigative Demand by the U.S. Department of Justice regarding ESI’s compliance with regulations regarding compensation.

Regarding the fiduciary obligations of institutions participating in Federal Student Aid, the ACICS *Accreditation Criteria* stipulates:

3-1-434. *Administration of Student Financial Aid.* Participation in state or federal student financial aid programs requires serious administrative responsibility. The Council expects all institutions participating in such programs to be knowledgeable of and in compliance with applicable laws and regulations.

Regarding the integrity and the administrative and organizational capacity of the institution, the *Criteria* require:

3-1-200 – *Organization*

Each institution should have an organizational structure designed to promote among all staff and faculty a spirit of understanding, cooperation, and responsibility. Performance standards and monitoring controls need to be employed to insure adequate administrative functioning.

3-1-202. Integrity. The integrity of an institution is manifested by the professional competence, experience, personal responsibility, and ethical practices demonstrated by all individuals comprising the ownership, control, or management.

An institution must assume full responsibility for the actions, statements, and conduct of its representatives and must, therefore, select each of them with the utmost care, provide them with adequate training, and arrange for constant and proper supervision and evaluation of their work. The Council considers the following to be important:

- (a) Emphasis shall be placed upon the efficiency and effectiveness of the overall administration of the institution. Attention shall be given to educational activities, admissions, student financial aid, financial operations, plant and equipment, student services, and compliance with applicable local, state, and federal laws.

3-1-303. Records. Careful recordkeeping is crucial to the smooth day-to-day operation of an institution. The data from these records are important to the institution for future planning, to students for informational purposes, and to evaluation teams during school visits. All such records should be maintained at each institutional site or shall be available at each site during evaluation visits. The Council expects at least the following:

- (a) Adequate records shall be kept by each institution relative to administrative operations. These include financial aid activities, admissions, curriculum, accreditation and licensure, guidance, instructional resources, supplies and equipment, school plant, faculty and staff, student activities, and student personnel.

Regarding the institution's compliance with applicable federal requirements regarding compensation paid to admissions and enrollment personnel:

1-2-100 – Minimum Eligibility Requirements

To be eligible for consideration for accreditation, an institution or entity must satisfy the following minimum requirements.

- (f) It shall be in compliance with all applicable laws and regulations.

The Council is required to review any adverse information regarding an institution once such information becomes known. Further, it may direct “a currently accredited institutions to provide a school closure plan or a formal teach-out agreement in response to adverse information.”

(Section 2-2-303, Teach-Out.)

Therefore, ESI is directed to provide the following:

1. An explanation of the basis for the findings of the U.S. Department of Education:
 - (a) Since at least the 2009-2010 award year, ITT failed to timely reconcile its Title IV, HEA program accounts;
 - (b) Prior to August 27, 2015, ITT had no written policy or procedure in place to guide the reconciliation of Title IV funds; and
 - (c) ITT has requested to reopen prior award years to correct additional reconciliation issues with a frequency substantially greater than that of comparable institutions.
2. Detailed remedies undertaken, if any, by ESI to remedy the findings and to bring the institution's administration of Federal Student Aid in compliance with Sections **3-1-434, 3-1-200, 3-1-202 and 3-1-303** of the ACICS *Accreditation Criteria*.

3. An explanation of the circumstances that led to the Department of Justice's Civil Investigative demand regarding compensation paid by ESI to admissions and recruitment personnel.
4. ESI's response to the DOJ's CID.

Please provide this information, including copies of appropriate materials to support your statements. The Council will expect your response on or before **Tuesday, Nov. 10, 2015**.

Your immediate attention to this matter is appreciated. If you have any questions, please contact me at (202) 336-6781 or abieda@acics.org.

Sincerely,

(b)(6)

Anthony S. Bieda
Vice President of External Affairs



October 28, 2015

ID Code 00015354

VIA E-MAIL ONLY

Mr. Shawn J. Crawford
SVP, Chief Compliance Officer
ITT Educational Services, Inc.
13000 North Meridian Street
Carmel, IN 46032

Dear Mr. Crawford:

The Council has been informed that ITT Educational Services, Inc., is subject to additional restrictions on its access to Federal Student Aid, an action taken by the U.S. Department of Education due to alleged “failure by ITT to meet its fiduciary obligations, to properly and timely reconcile Title IV program funds as per the regulations and Federal Student Aid guidance, and to meet the standards of administrative capability required of institution’s participating in Title IV, HEA programs.”

Furthermore, the Council has received information that ESI is the subject of a Civil Investigative Demand by the U.S. Department of Justice regarding ESI’s compliance with regulations regarding compensation.

Regarding the fiduciary obligations of institutions participating in Federal Student Aid, the ACICS *Accreditation Criteria* stipulates:

3-1-434. Administration of Student Financial Aid. Participation in state or federal student financial aid programs requires serious administrative responsibility. The Council expects all institutions participating in such programs to be knowledgeable of and in compliance with applicable laws and regulations.

Regarding the integrity and the administrative and organizational capacity of the institution, the *Criteria* require:

3-1-200 – Organization

Each institution should have an organizational structure designed to promote among all staff and faculty a spirit of understanding, cooperation, and responsibility. Performance standards and monitoring controls need to be employed to insure adequate administrative functioning.

3-1-202. Integrity. The integrity of an institution is manifested by the professional competence, experience, personal responsibility, and ethical practices demonstrated by all individuals comprising the ownership, control, or management.

An institution must assume full responsibility for the actions, statements, and conduct of its representatives and must, therefore, select each of them with the utmost care, provide them with adequate training, and arrange for constant and proper supervision and evaluation of their work. The Council considers the following to be important:

- (a) Emphasis shall be placed upon the efficiency and effectiveness of the overall administration of the institution. Attention shall be given to educational activities, admissions, student financial aid, financial operations, plant and equipment, student services, and compliance with applicable local, state, and federal laws.

3-1-303. Records. Careful recordkeeping is crucial to the smooth day-to-day operation of an institution. The data from these records are important to the institution for future planning, to students for informational purposes, and to evaluation teams during school visits. All such records should be maintained at each institutional site or shall be available at each site during evaluation visits. The Council expects at least the following:

- (a) Adequate records shall be kept by each institution relative to administrative operations. These include financial aid activities, admissions, curriculum, accreditation and licensure, guidance, instructional resources, supplies and equipment, school plant, faculty and staff, student activities, and student personnel.

Regarding the institution's compliance with applicable federal requirements regarding compensation paid to admissions and enrollment personnel:

1-2-100 – Minimum Eligibility Requirements

To be eligible for consideration for accreditation, an institution or entity must satisfy the following minimum requirements.

- (f) It shall be in compliance with all applicable laws and regulations.

The Council is required to review any adverse information regarding an institution once such information becomes known. Further, it may direct “a currently accredited institutions to provide a school closure plan or a formal teach-out agreement in response to adverse information.”

(Section 2-2-303, Teach-Out.)

Therefore, ESI is directed to provide the following:

1. An explanation of the basis for the findings of the U.S. Department of Education:
 - (a) Since at least the 2009-2010 award year, ITT failed to timely reconcile its Title IV, HEA program accounts;
 - (b) Prior to August 27, 2015, ITT had no written policy or procedure in place to guide the reconciliation of Title IV funds; and
 - (c) ITT has requested to reopen prior award years to correct additional reconciliation issues with a frequency substantially greater than that of comparable institutions.
2. Detailed remedies undertaken, if any, by ESI to remedy the findings and to bring the institution's administration of Federal Student Aid in compliance with Sections **3-1-434, 3-1-200, 3-1-202 and 3-1-303** of the ACICS *Accreditation Criteria*.

3. An explanation of the circumstances that led to the Department of Justice's Civil Investigative demand regarding compensation paid by ESI to admissions and recruitment personnel.
4. ESI's response to the DOJ's CID.

Please provide this information, including copies of appropriate materials to support your statements. The Council will expect your response on or before **Tuesday, Nov. 10, 2015**.

Your immediate attention to this matter is appreciated. If you have any questions, please contact me at (202) 336-6781 or abieda@acics.org.

Sincerely,

(b)(6)

Anthony S. Bieda
Vice President of External Affairs

From: [Anthony Bieda](#)
To: [Quentin Dean](#)
Subject: FW: Form 8-K Filing and DOJ Civil Investigative Demand
Date: Tuesday, September 22, 2015 4:34:36 PM
Attachments: [ESI \(ITT Educational Services Inc.\) \(8-K\) 2015-09-21.pdf](#)
[image001.png](#)

Please add this to adverse for ITT. Thanks!

Anthony S. Bieda
Vice President for External Affairs
Accrediting Council for Independent Colleges and Schools
750 First Street, NE | Suite 980 | Washington, DC 20002
www.acics.org | 202.336.6781 - p | 202.842.2593 - f
Follow us on Twitter - <http://twitter.com/acicsaccredits>
Like us on Facebook - <http://facebook.com/acicsaccredits>

CONFIDENTIALITY NOTICE:

This communication is only intended for the persons or entities to which it is addressed or copied and may contain information that is confidential and/or privileged in some way. Distribution or copying of this communication or the information contained herein is not expressly authorized. ACICS reserves the right to disclose this communication as required by law without the consent of the persons or entities to which this communication is addressed.

From: Shawn Crawford at HQ [<mailto:SCrawford@itt-tech.edu>]
Sent: Tuesday, September 22, 2015 2:54 PM
To: Albert C. Gray
Cc: Anthony Bieda
Subject: Form 8-K Filing and DOJ Civil Investigative Demand

Dr. Gray:

Yesterday, ITT Educational Services, Inc. disclosed in the attached SEC filing that we have received a civil investigative demand from the U.S. Department of Justice.

The DOJ has made an informal request to ITT for certain documents and information, rather than issuing a formal, executed CID. The DOJ asked ITT if it would be willing to move forward under this approach, and ITT agreed that it would. ITT has begun a dialog with the DOJ attorney handling this matter, and has committed to the DOJ that it will cooperate fully with the DOJ's investigation.

Since the CID has just recently been received, ITT does not know what caused it to be issued, or what may be behind it. The DOJ has only informed ITT that it was issued pursuant to the Federal False Claims Act and is focused on compliance with the ED Program Participation Agreement regulations. As you may know, many postsecondary school companies have been investigated with respect to their compliance with the ED "incentive compensation" regulations, and based on the nature of the questions and document requests in the CID, it appears that may be the focus of this review. ITT believes it can demonstrate to the DOJ its full and careful compliance with that law and the ED regulations.

The Assistant U.S. Attorney on this case (Jason Mehta) has told ITT that he is being assisted in this investigation by Dan Zibel in ED's Office of General Counsel.

I trust this information is helpful to you. We will keep you apprised of all further developments.

Very truly yours,

Shawn

Shawn J. Crawford
SVP, Chief Compliance Officer
ITT Educational Services, Inc.
13000 N. Meridian Street
Carmel, IN 46032
(317) 582-0720

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FORM 8-K

ITT EDUCATIONAL SERVICES INC - ESI

Filed: September 21, 2015 (period: September 18, 2015)

Report of unscheduled material events or corporate changes.

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 8-K
CURRENT REPORT
Pursuant to Section 13 or 15(d) of the
Securities Exchange Act of 1934

DATE OF REPORT (Date of earliest event reported): **September 18, 2015**

ITT EDUCATIONAL SERVICES, INC.
(Exact name of registrant as specified in its charter)

Delaware
(State or other
jurisdiction of
incorporation)

1-13144
(Commission
File Number)

36-2061311
(IRS Employer
Identification No.)

13000 North Meridian Street
Carmel, Indiana 46032-1404
(Address of principal executive offices) (Zip Code)

Registrant's telephone number, including area code: **(317) 706-9200**

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Item 1.01 Entry into a Material Definitive Agreement.

On September 18, 2015, ITT Educational Services, Inc. (the "Company") entered into Amendment No. 3 to Financing Agreement (the "Financing Agreement Amendment") with Cerberus Business Finance, LLC ("Cerberus"), as collateral agent and administrative agent, and the lenders party thereto. The Financing Agreement Amendment provides for an amendment to the Financing Agreement, dated as of December 4, 2014, as amended on December 23, 2014 and March 17, 2015 (the "Financing Agreement"), by and among the Company, the subsidiary guarantors party thereto, Cerberus and the lenders party thereto.

The Financing Agreement Amendment provides for an amendment to the provision requiring the Company to prepay the outstanding principal of the term loans outstanding under the Financing Agreement (the "Loans") in an amount equal to 100% of the Net Cash Proceeds (as defined in the Financing Agreement) received in connection with any Extraordinary Receipts (as defined in the Financing Agreement), modifying it to include two limited exceptions thereto which provide that:

- the Company is only required to prepay the Loans in an aggregate amount of 66 2/3% of the federal income tax refund that is received by the Company as a result of the Company filing to carry back to a prior year the net taxable operating loss reported on its federal income tax return for the year ended December 31, 2014; and
- the Company is not required to prepay the Loans with cash received from individual tax refunds to the extent that the amount of any such refund is less than \$100,000.

The above summary of the Financing Agreement Amendment is qualified in its entirety by the full text of the Financing Agreement Amendment, a copy of which is attached hereto as Exhibit 10.1 and incorporated herein by reference.

The Company desired to enter into the Financing Agreement Amendment due to a federal income tax refund that it believes it will receive. The Company reported a net operating loss on its federal income tax return for the year ended December 31, 2014, and it expects to receive a federal income tax refund (the "Refund") in an estimated amount of approximately \$18.2 million in connection with a claim to carry back its 2014 net operating loss to the tax year ended December 31, 2012, which the Company expects to file before October 1, 2015. Without the Financing Agreement Amendment, the Company believes it would have been required to utilize the full amount of the Refund to prepay the Loans. Alternatively, the Company could have chosen to utilize the net operating loss to offset future tax obligations, which would have resulted in no obligation to prepay the Loans. As a result of the Financing Agreement Amendment, however, the Company will only be required to prepay the Loans in an amount equal to 66 2/3% of the total Refund amount received in connection with the Company's claim to carry back the 2014 net operating loss to a prior year. In addition, the Financing Agreement Amendment clarifies that cash received related to individual tax refunds that are less than \$100,000 each will not be required to be utilized to prepay the Loans.

As a result of its expectation related to the Refund, the Company expects to prepay approximately \$12.1 million of the Loans upon the receipt of the Refund. The Company believes that it will receive the Refund in the fourth quarter of 2015 or the first quarter of 2016. The income tax effect of the estimated 2014 net operating loss was reflected in the Company's financial statements as of and for the year ended December 31, 2014. Although the Company expects to receive the Refund as described above, it cannot provide any assurance that it will receive any such Refund, including in the amount or within the time period expected.

Item 8.01 Other Events.

The Company announced that it has received a Civil Investigative Demand (“CID”) from the U.S. Department of Justice (“DOJ”). The CID provides that the purpose of the investigation is “to determine whether there is or has been a violation of [the False Claims Act]” and is “focused on whether [the Company] knowingly submitted false statements in violation of the Department of Education’s Program Participation Agreement regulations.” The CID contains requests for production of documents and answers to interrogatories which the Company believes are principally related to the Company’s compliance with the U.S. Department of Education’s compensation regulations. The Company believes that its practices with respect to compensation matters are in compliance with applicable laws and regulations, and is cooperating with the DOJ in responding to the CID.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits:

The following exhibits are being filed herewith:

<u>Exhibit No.</u>	<u>Description</u>
10.1	Amendment No. 3 to Financing Agreement, dated as of September 18, 2015, by and among ITT Educational Services, Inc., the subsidiary guarantors party thereto, Cerberus Business Finance, LLC, as administrative agent and collateral agent, and the lenders party thereto

Except for the historical information contained herein, the matters discussed in this document are forward-looking statements within the meaning of the Private Securities Litigation Reform Act. Forward-looking statements are made based on the current expectations and beliefs of the company’s management concerning future developments and their potential effect on the company. The company cannot assure you that future developments affecting the company will be those anticipated by its management. These forward-looking statements involve a number of risks and uncertainties. Among the factors that could cause actual results to differ materially are the following: the failure of the company to receive the expected tax refund described in this document, including in the amount or within the time period expected; the impact of the company’s late filings with the U.S. Securities and Exchange Commission (“SEC”); the impact of adverse actions by the U.S. Department of Education (“ED”) related to the action by the SEC against the company and the company’s failure to submit its 2013 audited financial statements and 2013 compliance audits with the ED by the due date; the impact of the consolidation of variable interest entities on the company and the regulations, requirements and obligations that it is subject to; the inability to obtain any required amendments or waivers of noncompliance with covenants under the company’s financing agreement; the company’s inability to remediate material weaknesses, or the discovery of additional material weaknesses, in the company’s internal control over financial reporting; the company’s exposure under its guarantees related to private student loan programs; the outcome of litigation, investigations and claims against the company; the effects of the cross-default provisions in the company’s financing agreement; changes in federal and state governmental laws and regulations with respect to education and accreditation standards, or the interpretation or enforcement of those laws and regulations, including, but not limited to, the level of government funding for, and the company’s eligibility to participate in, student financial aid programs utilized by the company’s students; business conditions in the postsecondary education industry and in the general economy; the company’s failure to comply with the extensive education laws and regulations and accreditation standards that it is subject to; effects of any change in ownership of the company resulting in a change in control of the company, including, but not limited to, the consequences of such changes on the accreditation and federal and state regulation of its campuses; the company’s ability to implement its growth strategies; the company’s ability to retain or attract qualified employees to execute its business and growth strategies; the company’s failure to maintain or renew required federal or state authorizations or accreditations of its campuses or programs of study; receptivity of students and employers to the company’s existing program offerings and new curricula; the company’s ability to repay moneys it has borrowed; the company’s ability to collect internally funded financing from its students; and other risks and uncertainties detailed from time to time in the company’s filings with the SEC. The company undertakes no obligation to update or revise any forward-looking information, whether as a result of new information, future developments or otherwise.

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Date: September 21, 2015

ITT Educational Services, Inc.

By: /s/ Ryan L. Roney
Name: Ryan L. Roney
Title: Executive Vice President, Chief

Administrative and Legal Officer and Secretary

INDEX TO EXHIBITS

<u>Exhibit No.</u>	<u>Description</u>
10.1	Amendment No. 3 to Financing Agreement, dated as of September 18, 2015, by and among ITT Educational Services, Inc., the subsidiary guarantors party thereto, Cerberus Business Finance, LLC, as administrative agent and collateral agent, and the lenders party thereto

**AMENDMENT NO. 3
TO FINANCING AGREEMENT**

AMENDMENT NO. 3 TO FINANCING AGREEMENT, dated as of September 18, 2015 (this "Amendment"), to the Financing Agreement, dated as of December 4, 2014 (as amended, restated, supplemented or otherwise modified from time to time, the "Financing Agreement"), by and among ITT Educational Services, Inc. (the "Parent" or the "Borrower"), each subsidiary of the Parent listed as a "Guarantor" on the signature pages thereto (together with each other Person that executes a joinder agreement and becomes a "Guarantor" thereunder or otherwise guaranties all or any part of the Obligations (as defined therein), each a "Guarantor" and collectively, the "Guarantors"), the lenders from time to time party thereto (each a "Lender" and collectively, the "Lenders"), Cerberus Business Finance, LLC ("Cerberus"), as collateral agent for the Lenders (in such capacity, together with its successors and assigns in such capacity, the "Collateral Agent"), and Cerberus, as administrative agent for the Lenders (in such capacity, together with its successors and assigns in such capacity, the "Administrative Agent" and together with the Collateral Agent, each an "Agent" and collectively, the "Agents").

WHEREAS, the Loan Parties have requested that the Agents and the Lenders amend certain terms and conditions of the Financing Agreement; and

WHEREAS, the Agents and the Lenders are willing to amend such terms and conditions of the Financing Agreement on the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Definitions. All terms used herein that are defined in the Financing Agreement and not otherwise defined herein shall have the meanings assigned to them in the Financing Agreement.

2. Amendments.

(a) New Definitions. Section 1.01 of the Financing Agreement is hereby amended by adding the following definitions, in appropriate alphabetical order:

"Amendment No. 3" means Amendment No. 3 to Financing Agreement, dated as of September 18, 2015, by and among the Loan Parties, the Agents and the Lenders."

"Amendment No. 3 Effective Date" means the "Amendment Effective Date" as set forth in Amendment No. 3."

(b) Mandatory Prepayment. Section 2.05(c)(iv) of the Financing Agreement is hereby amended in its entirety to read as follows:

"(iv) Upon the receipt by any Loan Party or any of its Subsidiaries of any Extraordinary Receipts, the Borrower shall prepay the outstanding principal of the Loans in accordance with Section 2.05(d) in an amount equal to 100% of the Net Cash Proceeds received by such Person in connection therewith; provided that, notwithstanding the foregoing, with respect to the net taxable operating loss reported by the Borrower on its Fiscal Year ending December 31, 2014 federal income tax return (the "2014 Federal Net Operating Loss"), the Borrower shall only be required to prepay the Loans in accordance with Section 2.05(d) in an aggregate amount of 66 2/3% of the federal income tax refund that is received by the Loan Parties as a result of a filing to carry back the 2014 Federal Net Operating Loss; provided further that, notwithstanding anything to the contrary in this Agreement, the Borrower shall not be required to prepay any Loans with Extraordinary Receipts constituting individual tax refunds to the extent that the amount of any such refund is less than \$100,000."

3. Conditions to Effectiveness. This Amendment shall become effective only upon satisfaction in full, in a manner satisfactory to the Agents, of the following conditions precedent (the first date upon which all such conditions shall have been satisfied being hereinafter referred to as the "Amendment Effective Date"):

(a) Representations and Warranties. The representations and warranties contained Article VI of the Financing Agreement and in each other Loan Document shall be true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations or warranties that already are qualified or modified as to "materiality" or "Material Adverse Effect" in the text thereof, which representations and warranties shall be true and correct in all respects subject to such qualification) on and as of the Amendment Effective Date as though made on and as of such date, except to the extent that any such representation or warranty expressly relates solely to an earlier date (in which case such representation or warranty shall be true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations or warranties that already are qualified or modified as to "materiality" or "Material Adverse Effect" in the text thereof, which representations and warranties shall be true and correct in all respects subject to such qualification) on and as of such earlier date).

(b) No Default; Event of Default. After giving effect to this Amendment, no Default or Event of Default shall have occurred and be continuing on the Amendment Effective Date or result from this Amendment becoming effective in accordance with its terms.

(c) Delivery of Documents. The Collateral Agent shall have received on or before the Amendment Effective Date this Amendment, duly executed by the Loan Parties, each Agent and each Lender.

4. Continued Effectiveness of the Financing Agreement and Other Loan Documents. Each Loan Party hereby (a) acknowledges and consents to this Amendment, (b) confirms and agrees that the Financing Agreement and each other Loan Document to which it is a party is, and shall continue to be, in full force and effect and is hereby ratified and confirmed in all respects, except that on and after the Amendment Effective Date, all references in any such Loan Document to "the Financing Agreement", the "Agreement", "thereto", "thereof", "thereunder" or words of like import referring to the Financing Agreement shall mean the Financing Agreement as amended by this Amendment, and (c) confirms and agrees that, to the extent that any such Loan Document purports to assign or pledge to the Collateral Agent, for the benefit of the Agents and the Lenders, or to grant to the Collateral Agent, for the benefit of the Agents and the Lenders, a security interest in or Lien on any Collateral as security for the Obligations of the Loan Parties from time to time existing in respect of the Financing Agreement (as amended hereby) and the other Loan Documents, such pledge, assignment and/or grant of the security interest or Lien is hereby ratified and confirmed in all respects. This Amendment does not and shall not affect any of the obligations of the Loan Parties, other than as expressly provided herein, including, without limitation, the Loan Parties' obligations to repay the Loans in accordance with the terms of Financing Agreement or the obligations of the Loan Parties under any Loan Document to which they are a party, all of which obligations shall remain in full force and effect. Except as expressly provided herein, the execution, delivery and effectiveness of this Amendment shall not operate as a waiver of any right, power or remedy of any Agent or any Lender under the Financing Agreement or any other Loan Document nor constitute a waiver of any provision of the Financing Agreement or any other Loan Document.

5. No Novation. Nothing herein contained shall be construed as a substitution or novation of the Obligations outstanding under the Financing Agreement or instruments securing the same, which shall remain in full force and effect, except as modified hereby.

6. No Representations by Agents or Lenders. Each Loan Party hereby acknowledges that it has not relied on any representation, written or oral, express or implied, by any Agent or any Lender, other than those expressly contained herein, in entering into this Amendment.

7. Release. Each Loan Party hereby acknowledges and agrees that: (a) neither it nor any of its Subsidiaries has any claim or cause of action against any Agent or any Lender (or any of the directors, officers, employees, agents, attorneys or consultants of any of the foregoing) and (b) the Agents and the Lenders have heretofore properly performed and satisfied in a timely manner all of their obligations to the Loan Parties, and all of their Subsidiaries and Affiliates. Notwithstanding the foregoing, the Agents and the Lenders wish (and the Loan Parties agree) to eliminate any possibility that any past conditions, acts, omissions, events or circumstances would impair or otherwise adversely affect any of their rights, interests, security and/or remedies. Accordingly, for and in consideration of the agreements contained in this Amendment and other good and valuable consideration, each Loan Party (for itself and its Subsidiaries and Affiliates and the successors, assigns, heirs and representatives of each of the foregoing) (collectively, the "Releasors") does hereby fully, finally, unconditionally and irrevocably release, waive and forever discharge the Agents and the Lenders, together with their respective Affiliates and Related Funds, and each of the directors, officers, employees, agents, attorneys and consultants of each of the foregoing (collectively, the "Released Parties"), from any and all debts, claims, allegations, obligations, damages, costs, attorneys' fees, suits, demands, liabilities, actions, proceedings and causes of action, in each case, whether known or unknown, contingent or fixed, direct or indirect, and of whatever nature or description, and whether in law or in equity, under contract, tort, statute or otherwise, which any Releasor has heretofore had or now or hereafter can, shall or may have against any Released Party by reason of any act, omission or thing whatsoever done or omitted to be done, in each case, on or prior to the Amendment Effective Date directly arising out of, connected with or related to this Amendment, the Financing Agreement or any other Loan Document, or any act, event or transaction related or attendant thereto, or the agreements of any Agent or any Lender contained therein, or the possession, use, operation or control of any of the assets of any Loan Party, or the making of any Loans or other advances, or the management of such Loans or other advances or the Collateral. Each Loan Party represents and warrants that it has no knowledge of any claim by any Releasor against any Released Party or of any facts or acts or omissions of any Released Party which on the date hereof would be the basis of a claim by any Releasor against any Released Party which would not be released hereby.

8. Miscellaneous.

(a) This Amendment may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which shall be deemed to be an original but all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of this Amendment by facsimile or electronic mail shall be equally effective as delivery of an original executed counterpart of this Amendment.

(b) Section and paragraph headings herein are included for convenience of reference only and shall not constitute a part of this Amendment for any other purpose.

(c) This Amendment shall be governed by, and construed in accordance with, the laws of the State of New York.

(d) Each Loan Party hereby acknowledges and agrees that this Amendment constitutes a "Loan Document" under the Financing Agreement.

(e) Any provision of this Amendment that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining portions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

[Remainder of page intentionally left blank.]

DOC ID - 23530308.3

- 4 -

page hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed and delivered as of the date set forth on the first

BORROWER:

(b)(6)

GUARANTORS:

(b)(6)

DOC ID - 23530308.3

Amendment No. 3

COLLATERAL AGENT:

CERBERUS BUSINESS FINANCE, LLC

(b)(6)

ADMINISTRATIVE AGENT:

CERBERUS BUSINESS FINANCE, LLC

(b)(6)

DOC ID - 23530308.3

Amendment No. 3

LENDERS:

CERBERUS KRS LEVERED LLC

(b)(6)

CERBERUS ICQ LEVERED LLC

(b)(6)

CERBERUS ASRS FUNDING LLC

(b)(6)

DOC ID - 23530308.3

Amendment No. 3

LENDERS:

(b)(6)

DOC ID - 23530308.3

Amendment No. 3

September 4, 2015

Anthony S. Bieda
Vice President of External Affairs
Accrediting Council for Independent Colleges and Schools
750 First Street, NE, Suite 980
Washington, DC 20002-4223

RE: ITT Technical Institute – Alleged Targeted Recruitment of Military Veterans

Dear Mr. Bieda:

The ITT Technical Institutes have a long-established record of compliance with the *Accreditation Criteria*, including Section 3-1-410. Our institutions have an unwavering commitment to operating in accordance with the highest level of integrity and ethical standards and all applicable laws, regulations and rules.

In response to your August 27, 2015 letter referencing allegations that our institution engaged in a student recruiting program that used high pressure enrollment tactics against military veterans, we categorically deny that any such activity occurred. The ITT Technical Institutes do not use any high pressure enrollment tactics “against” any prospective students, let alone targeting such activities toward military veterans or any other specific class of our student census.

Attached for your reference is a copy of our institutional policy ER 1.8, Legal and Ethical Principles to be Followed by Recruitment Personnel. Our representatives also receive extensive training and are regularly observed to help ensure information presented to prospective students is accurate and that their conduct is appropriate.

In closing, we respectfully submit for your consideration the precept that unproven, non-adjudicated allegations are not evidence. If you require any additional information to assist with any consideration of this matter, please let me know.

Very truly yours,

(b)(6)

Shawn J. Crawford
Senior Vice President, Chief Compliance Officer

EMPLOYEE RELATIONS
LEGAL AND ETHICAL PRINCIPLES TO BE
FOLLOWED BY RECRUITMENT PERSONNEL

ER 1.8

Policy Owner: Human Resources

INTENT

To ensure that this policy is to ensure that all Recruitment Personnel are apprised of and understand their obligation to ITT/ESI and to prospective students to avoid making any representations which are not completely truthful and accurate.

SCOPE

Applies to ITT Educational Services, Inc., its operations and employees, including Headquarters (“HQ”), ITT Technical Institutes, etc. (“Company” or “ITT/ESI”).

RESPONSIBILITY

It is the responsibility of the Director of Recruitment must give the “Legal and Ethical Principles To Be Followed by Recruitment Personnel” booklets (“Booklets”) to all new Recruitment Personnel upon employment and forward the signed acknowledgment forms to the Human Resources Department.

The Human Resources Department must retain the signed acknowledgment forms, either in an electronic or hard copy form, in accordance with ITT/ESI Policy SS 5.0, Records Retention and Preservation.

POLICY

The Booklet must be given to all new Recruitment Personnel upon employment. All Recruitment Personnel are required to read the Booklet completely and carefully and sign the acknowledgment form included in the Booklet. The signed acknowledgment form must be included as part of the new hire packet and forwarded to the Human Resources Department. Recruitment Personnel who refuse or fail to sign the acknowledgment form are subject to corrective action, up to and including termination of employment.

KEY DEFINITIONS

Recruitment Personnel - means any individual employed by ITT/ESI who has any contact with a prospective student, any member of the prospective student’s family, high school counselors, or employers, the purpose of which contact is to enroll the prospective student in an ITT/ESI course of instruction.

EMPLOYEE RELATIONS
**LEGAL AND ETHICAL PRINCIPLES TO BE
FOLLOWED BY RECRUITMENT PERSONNEL**

ER 1.8

Policy Owner: Human Resources

Exhibit

Exhibit A – Legal and Ethical Principles To Be Followed by Recruitment Personnel

REFERENCES

Related Policy

SS 5.0 – Records Retention and Preservation Policy

Related Procedures

REC 2.6 – Recruitment Presentation Certification Procedure

REC 3.5 – Community Relations Specialist Certification Procedure

ITT Educational Services, Inc. ITT

Legal and Ethical
Principles To Be
Followed by
Recruitment
Personnel

October 2014



ITT Educational Services, Inc.

General

As a condition of initial and continued employment, all ITT/ESI recruitment personnel (including representatives, community relations specialists and others involved in student recruitment) are prohibited from making any statement or representation which is not completely true, honest and accurate.

Recruitment personnel must provide the standardized presentations to prospective students in a complete and clear manner. They must also use only advertising and presentation materials approved and provided by ITT/ESI Headquarters, without any modification whatsoever.

Consequences of Improper Presentations or Failure To Disclose

The failure to adhere to acceptable standards of recruiting conduct can result in:

1. Loss of state authorization to operate a postsecondary educational institution.
2. Loss of accreditation of the school or program.
3. Loss of eligibility to participate in federal and state student financial aid programs.
4. Poor work habits on the part of recruitment personnel, resulting in low performance, including excessive no-shows or high attrition.
5. Loss of employment.
6. Lawsuits against the institute and recruitment personnel.

Pamphlets, Brochures, Catalogs

All representations in these materials must be true and complete and must give a fair and accurate picture of the institute, without exaggeration. Recruitment personnel must not embellish any statements or deviate in any way from what is stated in these materials.

Recruitment personnel must make a concerted effort to have the prospective student (and parents, if applicable) read these materials.

At all times Recruitment personnel must be capable of accurately discussing:

- credentials awarded (i.e., the full and exact title);
- the limits of career services assistance;
- the fact that the institute does not make any promise or representation that any student will obtain employment
- any employment obtained through the institute's career services assistance is most likely to be entry-level;
- the refund policy; and
- the transferability of credits using exact wording as stated in the catalog;

Representatives must be able to accurately refer prospective students to the Catalog and Student Handbook or other departments if necessary for topics related to homework, tutoring, the necessity for a mature attitude toward studies, personal discipline and motivation, and causes for termination by the institute. ITT/ESI has implemented a standardized student enrollment process to help ensure that all prospective students receive consistent and accurate information regarding ITT/ESI. More information about this standardized student enrollment process can be found in Appendix A.

Training and Licensure of Recruitment Personnel

In states that require licensure, Representatives must be properly licensed prior to contacting or meeting with prospective students.

All new recruitment personnel are required to successfully complete the e-Campus training curriculum, as well as demonstrate effective delivery of the ITT Technical Institute approved presentation. The institute will monitor the activities of recruitment personnel and thoroughly investigate any complaints against, or allegations of misrepresentation by, recruitment personnel. All Representatives, Managers of Recruitment, Directors of Recruitment and Regional Directors of Recruitment must be certified on the delivery of the current Presentation prior to contacting or meeting with prospective students in accordance with REC 2.6. All Community Relations Specialists must be certified on the delivery of all High School Presentations prior to contacting or meeting with high school staff or students in accordance with REC 3.5.

Financial Aid

All ITT/ESI employees are expressly prohibited from making any loan to prospective students for any purpose unless such employee is related by marriage or blood to such prospective student prior to inception of the loan. All ITT/ESI employees are expressly prohibited from promising, representing, guaranteeing or implying that prospective students will qualify for a particular type and/or a particular (dollar) amount of financial aid.

Discussion of financial aid by recruitment personnel is limited to the printed procedures associated with the approved presentation.

No Promise of Jobs

It must be made absolutely clear that ITT Technical Institute provides **ONLY** limited career services. Recruitment personnel must **NOT** promise, imply or suggest that the institute can or will secure a job for any student during his/her education or upon graduation. The institute will only assist graduates in their personal attempts to find entry-level employment. The graduates are solely responsible for finding employment and beginning their careers. It is permissible to state the extent to which the institute endeavors to arrange job interview opportunities with local employers for graduating students and graduates.

Testing

Under no circumstance will recruitment personnel provide materials, verbal or written coaching, or any other verbal or written information which may affect the prospective student's performance on any admission test or other evaluations.

Graduate Employment Disclosures

Regarding specific job and salary information, recruitment personnel are restricted to using only the information contained in documents approved by ITT/ESI Headquarters and provided by the institute to recruitment personnel to use without any bias, exaggeration or modification. Recruitment personnel are prohibited from promising, representing, guaranteeing or implying that entry-level employment in the prospective student's chosen field falls into a certain salary range or that PS will/should receive a certain salary.

When providing the Graduate Employment Information disclosure sheet, recruitment personnel are required to explain that the information about graduates who obtained employment on this disclosure includes graduates who obtained employment (a) prior to enrolling in the program, (b) while enrolled in the program and (c) after graduating from the program.

Degrees and Diplomas

Recruitment personnel must never deviate from a strictly accurate representation of the exact title of the credential awarded upon successful completion of a specified program. For example, if an associate degree program results in an Associate of Applied Science Degree, the recruitment personnel must not simply state that the program results in an associate's degree – the recruitment personnel must only state that the program results in an Associate of Applied Science Degree.

Transferability of Course Credits

Recruitment personnel must not state, imply or suggest that some or all course credits of the school are transferable to any other institutions of higher learning. Recruitment personnel are required to state that credits earned in an ITT Technical Institute program of study are not likely to be transferable to or be accepted by any institution other than another ITT Technical Institute. Recruitment personnel must also show the prospective student the applicable passages in the catalog that refer to transferability of credits. Decisions regarding the acceptance of credits by any institution other than ITT Technical Institute are at the sole discretion of the receiving institution, and no representation is made concerning the transferability of credits to such institutions.

Do not attempt to expound upon or explain the language in the catalog concerning transferability of credits. Let the catalog language speak for itself.

Refunds

Applicants must be shown the institute's refund policy, which is clearly explained in detail in the catalog and the enrollment agreement.

Minors and Parents or Guardians

Students who are minors under the laws of the state where they are applying must co-sign the enrollment agreement. The minor's legally competent parent or guardian also must co-sign the enrollment agreement and, thereby, obligate the parent or guardian to pay the sums owed under the enrollment agreement.

ITT/ESI Headquarters will inform the institutes of the age of majority in each state.

Work Required and Homework

Applicants should be informed that the attendance policy in the catalog will be strictly enforced. Recruitment personnel must advise each applicant that his/her chosen program of study will entail varying amounts of homework and outside class preparation, depending on the course, faculty member and the student's progress in the course.

Student Safety, Code of Conduct, and Conduct On and Off School Premises

Applicants should be informed that they may be terminated from the institute if their conduct does not conform to the rules of conduct, as stated in the catalog. Recruitment personnel must advise students and their parents of the institute's safety and conduct codes. Recruitment personnel should make it clear that the institute does not and cannot act as a student's guardian, monitor the private lives of students, or exercise any control over the persons with whom students may become associated. The institute's students are expected to act responsibly as mature adults and accept, as part of their preparation for the workplace, complete responsibility for their behavior and well-being.

Employee/Student Interaction

The conduct of an employee entering into a personal, social or romantic relationship with a student or prospective student is inconsistent with the obligations of an ITT/ESI employee to maintain a professional demeanor toward the student or prospective student. ITT/ESI employees are prohibited from (i) pursuing a social relationship with any student or prospective student that involves any interaction outside the normal scope of the educational services ITT/ESI provides to the student, (ii) pursuing a romantic relationship with any student, (iii) dating any student or (iv) cohabiting with any student, unless the employee is related by marriage or blood to the student. Violation of this policy will result in disciplinary action up to and including termination.

Protection of Corporate Data

ITT/ESI employees must maintain the confidentiality of information entrusted to them by the company or its customers (except when disclosure is authorized or legally mandated), including all non-public information that might be of use to competitors or harmful to ITT/ESI or its customers if disclosed. ITT/ESI employees must protect and restrict the transfer of confidential company and customer information to anyone outside of ITT/ESI. These requirements extend to any inquiry information. All recruitment personnel are reminded they are prohibited from disclosing inquiry information and from taking personal advantage of such information for themselves or their relatives or friends. Any of these situations could lead to legal liability for the individual or individuals involved. At a minimum, any such unauthorized activity will lead to disciplinary action up to and including termination of employment.

Conclusion

The previous material will not cover all situations which may arise in the course of recruitment personnel duties. All recruitment personnel must practice absolute integrity, utilize common sense and be completely fair and truthful in dealing with the prospective student and the prospective student's parents. Most student dissatisfaction can be traced to a misunderstanding on the part of the prospective student as to what the prospective student expects to experience at the institute. It is the goal of recruitment personnel to eliminate any such misunderstanding.

There are a variety of federal and state laws that make it unlawful for recruitment personnel to misrepresent any information or otherwise engage in any unfair or deceptive practices. All recruitment personnel are required to comply with those laws. Failure to comply will lead to disciplinary action, up to and including termination.

ITT/ESI is committed to operating its business in accordance with the highest level of integrity and ethical standards and all applicable laws, regulations and rules. The company wants to make sure that everyone who does business on behalf of ITT/ESI fully understands what is required of them and is able to ask questions if advice is needed. Should an improper practice or irregularity occur within the company, we are committed to correcting the problem and taking appropriate steps to make sure it cannot happen again.

If you are unsure of what a policy requires of you, are concerned that ITT/ESI may be in violation of law or feel that a company policy is being violated, you may seek advice from your supervisor, upper management, the ITT/ESI Human Resources Department, ITT/ESI Chief Compliance Officer or the ITT/ESI General Counsel.

You may seek advice on a confidential basis from the ITT/ESI Senior Vice President, Chief Compliance Officer, in the following ways:

Call:

1-800-388-3368, extension 720

Or

1-800-420-4340 (ITT/ESI Alert line administered by NAVEX)

Or

Write to:

ITT Educational Services, Inc.

13000 North Meridian Street

Carmel, Indiana 46032-1404

Attn: Senior Vice President, Chief Compliance Officer

APPENDIX A

ITT/ESI has implemented a standardized student enrollment process to help ensure that all prospective students receive consistent and accurate information regarding ITT/ESI. Any deviation from the standardized student enrollment process is subject to corrective action. Deviations from the standardized enrollment process have been categorized into “Tiers” which indicate degrees of severity. Tier 1 statements and actions are the most severe, followed by Tier 2 statements and actions and, lastly, Tier 3 statements and actions, as follows:

Tier 1 Statements/Actions

- **Promise/representation/guarantee/implication that ITT/ESI will secure a job for the prospective student (“PS”)**
- **Promise/representation/guarantee/implication that entry-level employment in the PS’s chosen field falls into a certain salary range or that PS will/should receive a certain salary**
- **Referring students to salary information other than that provided by the Graduate Employment Information form, such as salary.com**
- **Promise/representation/guarantee/implication that a course credit is transferrable to any institution other than an ITT Tech**
- **Failure to provide the PS with a tour of the School (except for a PS seeking admission to an online program)**
- **Providing inaccurate or incomplete information on the total cost of the PS’s program based on the total number of credit hours included in the program**
- **Promise/representation/guarantee/implication that PS will qualify for a particular type and/or a particular (dollar) amount of financial aid**

- **Advising or suggesting that the PS should falsify assets, income information or number of dependents.**
- **Entering or amending information on behalf of a PS in a U.S. Department of Education database without the PS's express consent**
- **Obtaining/retrieving/writing down/creating/requesting/intentionally observing the PS's U.S. Department of Education PIN**
- **Providing verbal or written coaching or answers to a PS taking an admission exam**
- **Any statement about an institutional or programmatic accreditation that is not specified in a school catalog**
- **Promise/representation/guarantee that the PS will be scheduled for courses offered during a particular class session or held on particular days**
- **Using any sales or marketing materials that have not been approved by HQ**

Tier 2 Statements/Actions

- **Any non-Tier 1 statement/action in which the employee expressly "guarantees" or "promises" anything**
- **Providing an inaccurate title or description of the credential awarded**
- **Any statement suggesting that admission to an ITT Tech is "highly" or "very" selective or even selective**
- **Representing that the number of seats in the class are limited**
- **Any statement representing or suggesting that ITT Tech offers lifetime placement assistance**
- **Any statement that the PS's program will provide the PS with job/professional/career/work/real world experience**

- Any statement that all instructors are “experts” or have “real world experience in the field” or that students are “taught by experts.”
- Failure to provide the standard computer presentation to the PS in its entirety
- Skipping or fast-forwarding through the presentation slide that says that decisions regarding the transfer of credits earned at ITT Tech are made by the receiving institution
- Denying a PS’s request to meet, or failure to offer a PS with an opportunity to meet, with a FAC and receive a financial aid pre-requisite during the visit (regardless of whether the PS provides a Social Security Number)
- Using any sales or marketing materials that are outdated
- Failure to ask the PS to take the admission exam if admission exam is required (regardless of whether the PS provides a Social Security Number)
- Any statement about a program that is not in the school catalog (e.g., a future program)
- Promise/representation/guarantee/implication that the PS will obtain an externship or internship

Tier 3 Statements/Actions

- Any statement that is not completely truthful and accurate and that does not otherwise result in a Tier 1 or 2 statement/action
- Any statement using the following language or similar language, not resulting in a Tier 1 or 2 statement/action:
 - that a “student will learn”
 - that a student will be successful

- ITT Tech “prepares the student”
- that the PS will be able to use, or that ITT Tech uses, “state-of-the-art” equipment or “newer/up-to-date technology”
- “good, better, best”
- “free”
- “expert”
- “accommodate schedules”
- Any statement regarding the percentage of lab time in a program
- Failure to state that ITT Tech is accredited by the ACICS
- Any statement comparing ACICS accreditation to any other accrediting agency
- Specifically mentioning other institutions’ names or speaking negatively or disrespectfully about other institutions.
- Any statement suggesting individual tutoring is available
- Any statement about financial aid or the financial aid process by a Representative that deviates from or contradicts what is provided in the standard computer presentation, or is in addition to the topics covered by the standard computer presentation
- Asking the PS if he or she has ever defaulted on a student loan.
- Failure to identify employers who have hired graduates of that ITT Tech campus in the last 36 months, or identifying employers who have not hired graduates of that ITT Tech campus in the last 36 months
- Any statement representing or suggesting that ITT/ESI or a particular ITT Tech has a “strong relationship” with an employer

Point Values

Statements and actions that fall within each Tier are assessed different point values, as follows:

- **Each Tier 1 Statement/Action = 7 points**
- **Each Tier 2 Statement/Action = 2.5 points**
- **Each Tier 3 Statement/Action = 1 point**

Level of Corrective Action

The appropriate level of corrective action associated with each deviation is determined by the total number of points assessed, as follows:

- **> 7 points Termination of employment**
- **5 to 6 points Final Written Warning, recertification and documented training with respect to each particular statement/action**
- **3 to 4 points Written Warning, recertification and documented training with respect to each particular statement/action**
- **1 to 2 points Counseling and documented training with respect to each particular statement/action**

The level of corrective action must follow the corrective action prescribed above, unless otherwise approved in writing in advance by the Director of Human Resources and Counsel, or the Vice President of Human Resources ITT EDUCATIONAL SERVICES, INC.

ACKNOWLEDGMENT FORM

Legal and Ethical Principles To Be Followed by Recruitment Personnel

Name _____

Date _____

I certify that I have read ITT Educational Services' "Legal and Ethical Principles to be followed by ITT Technical Institute Recruitment Personnel", understand all portions, agree to be bound by the Legal and Ethical Principles, and will act in accordance with all the policies contained in the Legal and Ethical Principles.

Signature _____

Date _____

A copy of this form should accompany all other hire paperwork and be forwarded to the ITT/ESI HQ Human Resources Department for retention in all Recruitment Personnel's personnel file.

ITT Educational Services, Inc.
13000 N. MeridianSt.
Carmel, IN 46032
10/14



July 2, 2015

VIA EMAIL & CERTIFIED MAIL

Mr. Shawn J. Crawford
SVP, Chief Compliance Officer
ITT Educational Services, Inc.
13000 North Meridian Street
Carmel, IN 46032

Dear Mr. Crawford:

This letter is to reiterate, consolidate and clarify the materials and documents requested to inform the Council's deliberations regarding the accreditation status of ITT. This correspondence augments the letter dated June 2, 2015 and does not supersede other information and data that ITT is currently providing in response to ACICS request.

The basis for the inquiry is the adverse information derived from state and federal governmental entities, including the courts, state approval entities, state veterans benefits agencies, state attorneys general, the Securities and Exchange Commission (SEC), the Consumer Financial Protection Bureau (CFPB), the U.S. Department of Education (ED.Gov), and the news media. **Please provide information regarding each of the following issues to ACICS no later than Friday, July 17:**

- Current status of the lawsuit against ITT Technical Institute brought by Rodford Seabolt et al. in Jefferson County Court, KY;
- The Current status of the lawsuit brought by the CFPB against ITT Educational Services, Inc. for predatory student lending;
- The status of investigations brought by state attorneys general in New Mexico, Illinois and Iowa;
- The conditions placed on ITT Technical Institute's authority to operate in Florida by the Commission on Independent Education;
- The status of the litigation filed by ITT Technical Institute against the California State Approving Agency for Veterans Education (CSAAVE);
- The status of the action brought by the SEC against ITT Education Services, Inc. (ESI) for accounting issues and disclosures regarding ESI's institutional student lending program;

In addition, please share copies of correspondence with the Federal Student Aid division of

Letter to Mr. Shawn J. Crawford

Re: ITT Adverse

July 2, 2015

Page 2 of 2

ED. Gov. regarding its review and conclusions about ESI's financial stability based on the audited 2014 financial statement, as well as copies of bi-weekly cash flow projections as previously requested.

If you have questions about this correspondence please contact ACICS' Vice President of External Affairs, Mr. Anthony Bieda by phone at (202) 336-6781 or by email at abieda@acics.org.

Sincerely

(b)(6)

Albert C. Gray, Ph.D. 
President & CEO

C: Mr. Anthony Bieda, Vice President, External Affairs
Mr. Jeffrey Olszewski, Vice President, Finance
Ms. Katy Fisher, Manager, Accounting/Institutional Finance

July 13, 2015

Albert C. Gray, Ph.D.
President & CEO
Accrediting Council for Independent Colleges and Schools
750 First Street, NE, Suite 980
Washington, DC 20002-4223

RECEIVED

JUL 15 2015
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Dear Dr. Gray:

I am in receipt of your letter dated July 2, 2015, requesting information on the current status of several legal cases and regulatory matters. Pursuant to your request, I am providing summary information and the current status for each item cited.

➤ **Current Status of the lawsuit against ITT Technical Institute brought by Rodford Sebolt et al. in Jefferson County Court, KY**

A court hearing is scheduled for September 11, 2015 on enforceability of the enrollment agreement. We have defended, and intend to continue to defend, ourselves vigorously against the allegations made in the complaint.

➤ **The current status of the lawsuit brought by the CFPB against ITT Educational Services, Inc. for predatory student lending**

On February 26, 2014, the CFPB filed a complaint against us in the United States District Court for the Southern District of Indiana under the following caption: *Consumer Financial Protection Bureau v. ITT Educational Services, Inc.* (the “CFPB Litigation”). The complaint claimed, among other things, that we violated:

- Section 1036(a)(1) of the Consumer Financial Protection Act of 2010 (the “CFPA”), 12 U.S.C. § 5536(a)(1), which prohibits unfair, deceptive and abusive acts and practices, from July 21, 2011 through December 2011, by:
 - subjecting consumers to undue influence or coercing them into taking out private education loans through a variety of unfair acts and practices designed to interfere with the consumers’ ability to make informed, uncoerced choices;
 - taking unreasonable advantage of consumers’ inability to protect their interest in selecting or using the private education loans; and
 - taking unreasonable advantage of consumers’ reasonable reliance on us to act in the consumers’ interests; and
- the Truth in Lending Act, 15 U.S.C. §§ 1601 *et seq.*, and Regulation Z thereunder, 12 C.F.R. Part 1026, which require certain disclosures to be made in writing to consumers in connection with the extension of consumer credit, since March 2009, by failing to disclose a discount that constituted a finance charge.

We filed a motion to dismiss the CFPB Litigation on several grounds. On March 6, 2015, the court issued an order denying our motion in part and granting it in part, including dismissing the CFPB's claim under the Truth in Lending Act. On April 8, 2015, we filed a notice of appeal to the United States Court for the Seventh Circuit from the order on the motion to dismiss. We have defended, and intend to continue to defend, ourselves vigorously against the remaining allegations made in the complaint.

➤ **The status of investigations brought by state attorneys general in New Mexico, Illinois and Iowa**

NEW MEXICO

On February 27, 2014, the New Mexico Attorney General filed a complaint against us in the District Court of New Mexico under the following caption: *State of New Mexico, ex rel. Gary K King, Attorney General v. ITT Educational Services, Inc., et al.* (the "New Mexico Litigation"). On April 4, 2014, we removed the New Mexico Litigation to the U.S. District Court for the District of New Mexico. In April 2014, the Attorney General filed a motion to remand the New Mexico Litigation to the District Court of New Mexico. The complaint alleges, among other things, that we engaged in a pattern and practice of exploiting New Mexico consumers by using deceptive, unfair, unconscionable and unlawful business practices in the marketing, sale, provision and financing of education goods and services in violation of New Mexico's Unfair Practices Act.

In particular, the complaint contains allegations that:

- we misrepresented matters related to our nursing education program, including, without limitation, its programmatic accreditation status, the transferability of credits earned in the program and the curriculum of the program;
- we misrepresented the terms of the financial aid available to students and the cost of our programs;
- we engaged in unfair or deceptive trade practices;
- we failed to issue refunds; and
- our form enrollment agreement contained unenforceable and unconscionable provisions.

The complaint seeks:

- an order declaring portions of our enrollment agreement illusory, unconscionable and unenforceable;
- preliminary and permanent injunctive relief;
- disgorgement of unjust enrichment amounts;
- unspecified civil penalty amounts;
- restitution; and
- reasonable costs, including investigative costs.

The case has been remanded to state court effective July 2015. There is no pending investigation. We have defended, and intend to continue to defend, ourselves vigorously against the allegations made in the complaint.

ILLINOIS

The Illinois Attorney General has indicated that they are an interested party to the multistate attorney general group referenced above, but no other action has been taken by the Illinois Attorney General at this time.

IOWA

In January, February, April and May 2014, and in February, March and June 2015, we received subpoenas and/or Civil Investigative Demands (“CIDs”) from the Attorneys General of Arkansas, Arizona, Colorado, Connecticut, Hawaii, Idaho, Iowa, Kentucky, Maryland, Minnesota, Missouri, Nebraska, North Carolina, Oregon, Pennsylvania, Tennessee, Washington and the District of Columbia under the authority of each state’s consumer protection statutes. The Attorney General of the Commonwealth of Kentucky informed us that it will serve as the point of contact for the multistate group to respond to questions relating to the subpoenas and CIDs. The subpoenas and CIDs contained broad requests for information and the production of documents related to our students and practices, including marketing and advertising, recruitment, financial aid, academic advising, career services, admissions, programs, licensure exam pass rates, accreditation, student retention, graduation rates and job placement rates, as well as many other aspects of our business. We believe that several other companies in the proprietary postsecondary education sector received similar subpoenas and CIDs. We are cooperating with the Attorneys General of the states involved.

➤ **The conditions placed on ITT Technical Institute’s authority to operate in Florida by the Commission on Independent Education**

In July 2014, as a result of the delay in the submission of our 2013 audited consolidated financial statements the Florida Commission for Independent Education (“CIE”) took the following actions:

- changed the authorization to operate for each of our Florida campuses from an annual license to a provisional license;
- told us that it would conduct an on-site visit of each of our Florida campuses to determine the campus’ compliance with the CIE regulations;
- told us that it would require each of our Florida campuses to correct any deficiencies noted during our CIE on-site visit of the campus;
- required us to submit to the CIE any correspondence that we or any of our institutions have with the ED or the Accrediting Commission of our Florida campuses, within 15 days of the submission or receipt of that correspondence;
- required each of our Florida campuses to submit a train-out plan to our Florida SA on or before September 4, 2014; and
- required us to report to the CIE, at its September 2014 meeting, on the stability of our Florida campuses and any changes that may further affect our stability or operations.

As of the last CIE public board meeting on May 21, 2015, the CIE issued an order dated May 29, 2015 that continued the provisional license for all Florida campuses until December 2015. The order also requires us to:

- submit a roster of current and prospective Florida students,
- submit a written teach-out plan for each Florida campus,
- submit a written retention plan for all Florida students,
- submit monthly progress reports,
- submit a profit and loss statement for each Florida campus,
- submit audited financial statements for ITT Educational Services, Inc.,
- provide the CIE with copies of any dispositive motions filed by any party and their appeals, and any court orders in the CFBP and SEC cases within ten days of their filing or rendering, and
- provide the CIE with any correspondence to or from the Department of Education (“ED”) within ten days of sending or receiving it.

We continue to offer educational services at all of our Florida campuses, attend all CIE public board meetings, and remain in compliance with all relevant requirements.

➤ **The status of the litigation filed by ITT Technical Institute against the California State Approving Agency for Veterans Education (CSAAVE)**

Effective May 11, 2015, the California State Approving Agency for Veterans Education (“CSAAVE”), a division of the California Department of Veterans Affairs, gave notice to all of our campuses in California, suspending the approval of their courses for receipt of veterans’ educational program benefits under the Montgomery GI Bill or the Post-9/11 Veterans Educational Assistance Act of 2008, as amended (collectively the “GI Bill Programs”). The basis for the suspension was CSAAVE’s determination that the campuses did not fully comply with the financial stability standards for accreditation published by the Accrediting Council for Independent Colleges and Schools (the “ACICS”). The notice of suspension precludes our California campuses from future enrollment or re- enrollment of veterans or their dependents intending to utilize the GI Bill Programs’ education benefits to pay in whole or in part for their enrollment in the campus.

We had been in contact with CSAAVE, which requested that we submit additional financial information, including a statement of determination from the ACICS that all of our California campuses fully comply with the ACICS financial stability standards and requirements for accreditation. Although we submitted the requested information to CSAAVE, they refused to lift the suspension order. In response, on June 1, 2015, we filed a verified petition for writ of mandate, application for stay, and complaint for injunctive and declaratory relief in the Superior Court of the State of California, County of Orange under the following caption: *ITT Educational Services, Inc. v. The California State Approving Agency for Veterans Education and the California Department of Veteran Affairs* (the “CSAAVE Petition”).

On June 23, 2015, the Honorable Judge William Cluster of the Orange County Superior Court issued an order staying CSAAVE’s suspension of approval of ITT’s courses for enrollment by veteran students, pending the Court’s adjudication of ITT’s petition for peremptory writ of mandate on or after August 21, 2015. While this stay is in effect, CSAAVE’s suspension of ITT’s courses for enrollment by veteran students is lifted. The Court ordered that CSAAVE and CalVet shall not issue any further notice to ITT’s veteran students about the suspension and that CSAAVE and CalVet shall notify the public of the lifting of the suspension.

➤ **The status of the action brought by the SEC against ITT Educational Services, Inc. (ESI) for accounting issues and disclosures regarding ESI’s institutional student lending program.**

On May 12, 2015, the SEC filed a civil enforcement action against us, our Chief Executive Officer, Kevin M. Modany, and our Chief Financial Officer, Daniel M. Fitzpatrick, in the United States District Court for the Southern District of Indiana under the following caption: *United States Securities and Exchange Commission v. ITT Educational Services, Inc., Kevin M. Modany and Daniel M. Fitzpatrick* (the “SEC Litigation”).

As we previously disclosed, we received several SEC subpoenas beginning on February 8, 2013. The SEC’s subpoenas requested the production of documents and communications that, among other things, relate to our actions, disclosures, and accounting associated with the CUSO Program and the PEAKS Program. We provided the information requested, including testimony of senior employees. On August 7, 2014, we received a “Wells Notice” from the Staff of the SEC notifying us that the Staff had made a preliminary determination to recommend that the SEC file an enforcement action against us. According to the Staff, the enforcement action would allege violations of Sections 10(b), 13(a) and 13(b)(2) of the Exchange Act and Rules 10b-5, 12b-20, 13a-1, 13a-11, 13a-13 and 13a-15 under the Exchange Act.

Under the SEC's procedures, a recipient of a Wells Notice has an opportunity to respond in the form of a Wells submission that seeks to persuade the SEC that such an action should not be brought. We made submissions to the Staff in response to the Wells Notice we received that set forth why the factual record does not support the enforcement action recommended by the Staff and explained that any of our perceived shortcomings were acts taken in good faith. Our Chief Executive Officer and Chief Financial Officer each made similar submissions.

The SEC Litigation relates to the matters addressed in the Wells Notice that we received, and the complaint alleges violations of Sections 10(b), 13(a) and 13(b)(2) of the Exchange Act; Rules 10b-5, 12b-20, 13a-1, 13a-11, 13a-13 and 13a-15 under the Exchange Act; and Section 17(a) of the Securities Act. Among other assertions, the complaint alleges that the defendants engaged in a fraudulent scheme and course of business and made various false and misleading statements to our investors relating to the CUSO Program and the PEAKS Program. The remedies sought by the SEC in the complaint include:

- a finding that each of the defendants committed the alleged violations;
- an injunction permanently restraining and enjoining each of the defendants from violating, directly or indirectly, the laws and rules alleged in the complaint;
- an order that Messrs. Modany and Fitzpatrick be permanently prohibited from acting as an officer or director of any public company;
- disgorgement of any and all ill-gotten gains, together with pre- and post-judgment interest, derived from the improper conduct alleged in the complaint;
- civil money penalties pursuant to Section 20(d) of the Securities Act and Section 21(d) of the Exchange Act in an amount to be determined by the court, plus post-judgment interest;
- an order that Messrs. Modany and Fitzpatrick reimburse us for all bonuses, incentive-based and equity-based compensation, and/or profits realized from their sale of our stock pursuant to Section 304 of the Sarbanes-Oxley Act of 2002; and
- such other relief as the court may deem just or appropriate.

We intend to defend ourselves vigorously against the allegations in the SEC's complaint.

- **In addition, please share copies of correspondence with the Federal Student Aid division of ED. Gov. regarding its review and conclusions about ESI's financial stability based on the audited 2014 financial statement, as well as copies of bi-weekly cash flow projections as previously requested.**

On May 20, 2015, the Department of Education ("ED") requested that ITT Educational Services, Inc., submit the following information:

- 13-week projected cash flow statement with applicable business and financial disclosures submitted on a bi-weekly basis; and
- Student Roster submitted on a monthly basis

We began providing these reports on June 1, 2015 pursuant to ED's schedule, and will continue to submit accurate and timely reports. As requested, we are now copying ACICS on all projected cash flow reports submitted to ED to date, and will copy ACICS on all submitted Student Roster updates as well.

To date, ED has not provided us with any substantive feedback about the reports submitted, although ED has requested minor changes in the information reported and the manner the information is to be formatted of the reports.

Dr. Albert C. Gray
July 13, 2015
Page 6

Consistent with our commitment to with keeping ACICS fully informed of all relevant developments that would reasonably inform the Council's deliberations regarding the accreditation status of the ITT Technical Institutes, we will continue to communicate regularly with ACICS on at least a monthly basis.

Thank you, and please let me know if you have any questions or require additional information.

Sincerely,

(b)(6)

Shawn J. Crawford
SVP, Chief Compliance Officer



June 30, 2015

ID Code 00015354

ID Code 00016046

ID Code 00023908

VIA E-MAIL ONLY

Mr. Shawn Crawford
Vice President, Compliance and Regulatory Affairs
ITT Educational Services, Inc.
13000 North Meridian Street
Carmel, IN 46032-1404

Dear Mr. Crawford:

This letter is a request for updated information regarding the following adverse issues regarding ITT Campuses in various locations:

- ITT Louisville, KY – The current status of the lawsuit against ITT Technical Institute filed by Mr. Rodford Seabolt et al. in the Jefferson County Court, KY.
- ITT, Indianapolis, IN – The current status of the Consumer Federal Protection Bureau (CFPB) lawsuit against ITT Educational Services Inc., for predatory student lending.
- The status of the investigations brought by state attorneys general in New Mexico, Illinois and Iowa.

Please respond by **July 10, 2015**. Until this matter is resolved, please continue to provide information to the Council as it becomes available.

If you have any questions, please contact me at (202) 336-6781 or abieda@acics.org.

Sincerely,

Anthony S. Bieda
Vice President of External Affairs



June 2, 2015

VIA EMAIL AND REGULAR MAIL

Mr. Shawn J. Crawford
SVP, Chief Compliance Officer
ITT Educational Services, Inc.
13000 North Meridian Street
Carmel, IN 46032

Dear Mr. Crawford:

The Council has received adverse communications with regard to ITT Educational Services, Inc. (ITT) from several media outlets, state agencies, and federal agencies including the Department of Education and the Securities and Exchange Commission. The Council is required to review any adverse information regarding an institution once such information becomes known.

Please provide this office with a comprehensive monthly update on any and all litigation or adverse communications ITT has received. Your written update should include, but is not limited to, a narrative outlining the circumstances that led to the litigation or communication, the current status and copies of appropriate materials to support your statements. In addition, the Council requires copies of all materials submitted by ITT to the various agencies pursuant to their respective directives (e.g. biweekly cash flow projections submitted to the Department of Education). Finally, to the extent possible please provide advance written notice to ACICS of any future adverse communication.

If you have any questions, please contact me or Ms. Katy Fisher at (202) 336-6842 or kfisher@acics.org.

Sincerely,

Albert C. Gray, Ph.D.
President and CEO

Cc: Katy Fisher, Manager of Institutional Finance
Jeff Olszewski, VP Finance
Anthony Bieda, VP External Affairs

From: [Shawn Crawford at HQ](#)
To: [Anthony Bieda](#)
Cc: [Quentin Dean](#)
Subject: RE: ACICS Adverse information request
Date: Monday, March 23, 2015 4:36:27 PM
Attachments: [image001.png](#)
[201503231616.pdf](#)

Tony:

Good afternoon.

Attached please find the response to your request for additional information on previously reported issues. The original letter is also being sent to your attention via overnight mail.

Please let me know if you have any questions, or require additional information.

Very truly yours,

Shawn

From: Quentin Dean [mailto:qdean@acics.org]
Sent: Wednesday, March 11, 2015 5:51 PM
To: Shawn Crawford at HQ
Subject: ACICS Adverse information request

Dear Mr. Crawford:

Please find attached a letter from Mr. Anthony S. Bieda, Vice President of External Affairs, ACICS, regarding adverse information about ITT Educational Services, Inc.

Please let me know if you need additional information.

With best regards,

Quentin Dean
Senior Regulatory Affairs Coordinator
Accrediting Council for Independent Colleges and Schools
750 First Street, NE | Suite 980 | Washington, DC 20002
www.acics.org | 202.336.6782 - p | 202.842.2593 - f
Follow us on Twitter - <http://twitter.com/acicsaccredits>
Like us on Facebook - <http://facebook.com/acicsaccredits>

CONFIDENTIALITY NOTICE:

This communication is only intended for the persons or entities to which it is addressed or copied and may contain information that is confidential and/or privileged in some way. Distribution or copying of this communication or the information contained herein is not expressly authorized. ACICS reserves the right to disclose this communication as required by law without the consent of the persons or entities to which this communication is addressed.



March 11, 2015

ID Code 00015354

ID Code 00016046

ID Code 00023908

VIA E-MAIL ONLY

Mr. Shawn Crawford
Vice President, Compliance and Regulatory Affairs
ITT Educational Services, Inc.
13000 North Meridian Street
Carmel, IN 46032-1404

Dear Mr. Crawford:

This letter is a request for updated information regarding the following adverse issues regarding ITT Campuses in various locations:

- ITT Phoenix, AZ - The current status with the Arizona Board of Nursing; copies of any further correspondence received from the Board as well as copies of any responses to said correspondence.
- ITT Louisville, KY – The current status of the lawsuit against ITT Technical Institute filed by Mr. Rodford Seabolt et al. in the Jefferson County Court, KY.
- ITT, Indianapolis, IN – The current status of the Consumer Federal Protection Bureau (CFPB) lawsuit against ITT Educational Services Inc., for predatory student lending.

Please respond by **March 24, 2015**. Until this matter is resolved, please continue to provide information to the Council as it becomes available.

If you have any questions, please contact me at (202) 336-6781 or abieda@acics.org.

Sincerely,

(b)(6)

Anthony S. Bieda
Vice President of External Affairs



November 10, 2014

ID Code 00015354

ID Code 00016046

ID Code 00023908

VIA E-MAIL ONLY

Mr. Shawn Crawford
Vice President, Compliance and Regulatory Affairs
ITT Educational Services, Inc.
13000 North Meridian Street
Carmel, IN 46032-1404

Dear Mr. Crawford:

This letter is a request for updated information regarding the following adverse issues regarding ITT Campuses in various locations:

- ITT Phoenix, AZ - The current status with the Arizona Board of Nursing; copies of any further correspondence received from the Board as well as copies of any responses to said correspondence.
- ITT Louisville, KY – The current status of the lawsuit against ITT Technical Institute filed by Mr. Rodford Seabolt et al. in the Jefferson County Court, KY.
- ITT, Indianapolis, IN – The current status of the Consumer Federal Protection Bureau (CFPB) lawsuit against ITT Educational Services Inc., for predatory student lending.

Please respond by **November 21, 2014**. Until this matter is resolved, please continue to provide information to the Council as it becomes available.

If you have any questions, please contact me at (202) 336-6781 or abieda@acics.org.

Sincerely,

(b)(6)

Anthony S. Bieda
Vice President of External Affairs

July 25, 2014

Anthony S. Bieda
Vice President for External Affairs
Accrediting Council for Independent Colleges and Schools
750 First Street, NE, Suite 980
Washington, DC 20002-4223

Re: ITT Technical Institute –Adverse Action Update

Dear Mr. Bieda:

The ITT Technical Institutes have an established record of compliance with the *Accreditation Criteria*, including Section 2-2-152. In response for your request for updated information on previously reported issues, I am pleased to communicate the following developments:

- ITT Technical Institute, Phoenix, AZ – The Breckinridge School of Nursing and Health Sciences @ ITT Technical Institute entered into a Consent Agreement with the Arizona State Board of Nursing earlier this month. A copy of this Consent Agreement is enclosed for your reference.
- ITT Technical Institute, Louisville, KY – ITT Technical Institute filed a motion to dismiss the lawsuit in January 2014 with the Jefferson County Court, and resolution of that motion is still pending.
- ITT Technical Institute, Indianapolis, IN – ITT Technical Institute filed a motion to dismiss the Consumer Federal Protection Bureau’s lawsuit in April 2014 with the Southern District of Indiana, and resolution of that motion is still pending.

We will continue to keep ACICS apprised of any material developments. If you require any additional information relating to the reported non-substantive change to the campus operations of the ITT Technical Institutes in the interim, please let me know.

Sincerely,

(b)(6)

Shawn J. Crawford
Vice President, Compliance and Regulatory Affairs

BEFORE THE ARIZONA STATE BOARD OF NURSING

IN THE MATTER OF NURSING PROGRAM
APPROVAL ISSUED TO:

BRECKINRIDGE SCHOOL OF NURSING @
ITT TECHNICAL INSTITUTE

RESPONDENT

CONSENT AGREEMENT
AND

ORDER NO. 131013RN96406,
070512RN96406, 310811RN96406

CONSENT AGREEMENT

Complaints alleging violations of the Nurse Practice Act by BRECKINRIDGE SCHOOL OF NURSING @ ITT TECHNICAL INSTITUTE ("Respondent") were received by the Arizona State Board of Nursing ("Board"). In the interests of a prompt and speedy settlement of the above-captioned matter, consistent with the public interest, statutory requirements and the responsibilities of the Board, and pursuant to A.R.S. § 41-1092.07(F)(5), the undersigned parties enter into this Consent Agreement as a final disposition of this matter.

Based on the evidence before it, the Board makes the following Factual Allegations and Conclusions of Law:

FACTUAL ALLEGATIONS

1. Respondent holds Board-issued, provisional approval for an associate degree nursing program, originally issued on August 4, 2009.
2. Between 2011 and 2013, Respondent's Nursing Program Administrator and Faculty did not have control over the Program, as required by Board rules, including admission standards, progression standards, and graduation policy.
3. Between 2012 and 2013, during Respondent's clinical sessions, three medication errors and multiple instances of late medication administration occurred involving care provided

to patients by Respondent's students who were under the supervision of Respondent's faculty. Some of the errors occurred as a result of improper direction to students by Respondent's faculty.

4. Between 2011 and 2013, Respondent did not adequately ensure the safe care of patients when it failed to assess student ability and properly prepare students prior to permitting students to care for patients in clinical sessions. This included some students being required to provide care to patient populations before receiving classroom training for that population.

5. Between 2011 and 2013, Respondent failed to consistently follow its own student grievance policies and to properly make the policies available to students.

CONCLUSIONS OF LAW

Pursuant to A.R.S. §§ 32-1606, 32-1663 and 32-1664, the Board has subject matter and personal jurisdiction in this matter.

The parties agree that if the factual allegations were found to be true, the conduct and circumstances alleged in the Factual Allegations would constitute violations of A.R.S. § 32-1663 (D) as defined in A.R.S. § 32-1601 (22) (d) (Any conduct or practice that is or might be harmful or dangerous to the health of a patient or the public); and (j) Violating this chapter or a rule that is adopted by the board pursuant to this chapter, specifically:

Arizona Administrative Code ("A.A.C.") A.A.C. Rule 4-19-201 (D) and (E) (effective from March 7, 2005 to July 6, 2013) D. The parent institution shall center the administrative control of the nursing program in the nursing program administrator; A.A.C. Rule 4-19-203 (C) (1) and (6) (effective March 7, 2005 to July 6, 2013) C. The administrator shall: 1. Administer the nursing education program; D. The faculty shall supervise all students in clinical areas in accordance with the acuity of the patient population, clinical objectives, demonstrated competencies of the student, geographic placement of the student, and requirements established by the clinical

agency; R4-19-204 G. The nursing faculty, together with the program administrator, shall: 1. Develop, implement, and evaluate the program of learning; and 2. Develop and implement standards for the admission, progression, and graduation of students; A. A. C. Rule 4-19-205 (A) and (B) (effective March 7, 2005 to July 6, 2013) A. A nursing program shall have written policies available to students and the public regarding admission, readmission, transfer, advanced placement, progression, graduation, withdrawal, and dismissal. B. A nursing program shall have written policies available to students that address student rights, responsibilities, grievances, health, and safety; A.A.C. Rule 4-19-206 (C) (1) (a) and (c) (effective March 7, 2005 to July 6, 2013) C. A nursing program shall provide for progressive sequencing of classroom and clinical instruction sufficient to meet the goals of the program. 1. A registered nursing (RN) program shall provide clinical instruction that includes, at a minimum, selected and guided experiences that develop a student's ability to apply core principles of nursing in varied settings when caring for: a. Adult and geriatric patients with acute, chronic, and complex, life-threatening, medical and surgical conditions; c. Neonates, infants, and children.

Respondent does not admit to the Board's Factual Allegations.

In lieu of a formal hearing on these issues, and as final disposition of complaints related to Respondent received by the Board through March 26, 2014, Respondent agrees to issuance of the attached Order and waives all rights to a hearing, rehearing, appeal or judicial review relating to this matter. Respondent further waives any and all claims or causes of action, whether known or unknown, that Respondent may have against the State of Arizona, the Board, its members, officers, employees and/or agents arising out of this matter, as reflected in the Notice of Charges.

Respondent understands that all investigative materials prepared or received by the Board concerning these violations and all notices and pleadings relating thereto may be retained in the Board's file concerning this matter.

Without making any admissions, Respondent understands that the Factual Allegations in this Consent Agreement and Order ("Agreement") are not conclusive evidence of a violation of the Nurse Practice Act and may not be used for any other purposes, including civil litigation and arbitration, but may be used for purposes of determining sanctions in any future disciplinary matter(s) with the Board, which arise out of conduct not specifically alleged in the Board's December 31, 2013, Notice of Charges.

Respondent understands the right to consult legal counsel prior to entering into this Consent Agreement and such consultation has either been obtained or is waived.

Respondent understands that this Consent Agreement is effective upon its acceptance by the Board and by Respondent as evidenced by the respective signatures thereto. Respondent's signature obtained via facsimile shall have the same effect as an original signature. Once signed by Respondent, the Agreement cannot be withdrawn without the Board's approval or by stipulation between Respondent and the Board's designee. The effective date of this Order is the date the Consent Agreement is signed by the Board and by Respondent. If the Consent Agreement is signed on different dates, the later date is the effective date.



(b)(6)

Respondent *Ronald F. Hamm, RNP/PA-C BS NNAAP*

Dated: *6-30-2014*

ARIZONA STATE BOARD OF NURSING

(b)(6)

Joey Ridenour, R.N., M.N., F.A.A.N.
Executive Director

Dated: July 7, 2014

ORDER

In view of the above Factual Allegations, Conclusions of Law and the consent of Respondent, the Board hereby issues the following Order:

A. Respondent's consent to the terms and conditions of the Order and waiver of public hearing is accepted.

B. Respondent's program approval is placed on probation for three (3) years. Respondent is eligible for early termination of this Order and, if Respondent has remained compliant with this Order, may petition the Board for release from probationary status after one (1) year from the effective date of this Order, and no sooner than every six (6) months thereafter.

C. This Order becomes effective upon the Board and Respondent's acceptance of the Consent Agreement. The effective date of this Order is the date the Consent Agreement is signed by the Board and by Respondent. If the Consent Agreement is signed on different dates, the later is the effective date. Probation is to commence the effective date of this Order.

D. If Respondent is noncompliant with any of the terms of the Order, Respondent's noncompliance shall be reviewed by the Board for consideration of possible further discipline.

E. Probation is subject to the following terms and conditions:

TERMS OF PROBATION

1. Within seven days of the effective date of this Order, the Board shall note the probationary status of the program on the list of approved programs with the following notation: "VOLUNTARY CONSENT TO PROBATION".

2. Respondent shall only admit students pursuant to admission standards developed in compliance with Arizona Administrative Code Rule 4-19-204(G).

3. Respondent shall provide the Board with accurate and complete quarterly reports containing the following, when applicable: Faculty minutes, student or faculty verbal and written complaints and grievances made to any employee of ITT Phoenix campus, responses to complaints and grievances, resolutions of complaints and grievances, attrition data for each cohort, admissions data, graduation data, student satisfaction, faculty control of program, faculty teaching and clinical assignments including qualifications to teach the particular subject or clinical area, HESI scores and any accompanying analyses, clinical incidents, if any, and substantive policy changes.

The quarterly reports are due 30 days after the conclusion of each academic quarter, beginning not later than October 30, 2014.

4. Respondent shall appear in person for interviews with the Board or its designee upon request at various intervals and with reasonable notice. Respondent shall cooperate with any announced or unannounced site visit by the Board or its designee. Respondent shall correct any deficiencies found by the Board or its designee within a reasonable time period as determined by the Board.

5. In the event Respondent's provisional nursing program approval is scheduled to expire while this Order is in effect, Respondent shall apply for renewal of the approval and otherwise maintain approval for a nursing program in Arizona.

6. Respondent shall obey all laws/rules governing nursing education in this state and obey all federal, state and local laws.

7. Respondent shall bear all costs of complying with this Order.

8. If Respondent is noncompliant with this Order in any respect, the Board or its designee may notify Respondent of the noncompliance. Additionally, the Board may revoke probation and take further disciplinary action for noncompliance with this Order after affording Respondent notice and the opportunity to be heard. If a complaint or petition to revoke probation is filed against Respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

9. Respondent may, at any time this Order is in effect, voluntarily request surrender its provisional program approval.



ARIZONA STATE BOARD OF NURSING

(b)(6)

Joey Kington, R.N., M.N., F.A.A.N.
Executive Director

(b)(6)

News Releases

ITT Educational Services, Inc. Calls CFPB Complaint Unfounded, Asks Court To Dismiss

Apr 30, 2014

CARMEL, Ind., April 30, 2014 /PRNewswire/ -- ITT Educational Services, Inc. (NYSE: ESI), has moved to dismiss the complaint filed by the Consumer Financial Protection Bureau (CFPB) in U.S. District Court, because the Bureau's allegations are legally flawed and violate the Constitution.

ESI, a leading private college system, said in its response to the agency's allegations – which primarily attack private student loans issued by third parties during a five-month period in late 2011 – that ESI "does not provide consumer financial products, and its conduct as described in the Bureau's complaint falls outside the Bureau's jurisdiction. The complaint recognizes that the loans at issue in this case were made by third parties—not [ESI]."

ESI noted that the Bureau makes misleading use of "mystery shopper" reports that the company uses to help ensure its activities conform to its policies and are compliant with state and federal regulations: "The complaint provides only out-of-context, edited quotations from select mystery shopper reports. The full quotations reveal a starkly different picture."

On pages 5-6 of the response, ESI cites the Bureau's use of a mystery report that was truncated to create a misleading impression:

For example, the complaint quotes one mystery shopper as describing [ESI]'s insistence on following up with the prospective student as "a bit invasive", yet omitted the remainder of the shopper's report stating that she "was pleasantly overwhelmed at how willing and excited [the school] was to help me in finding a career," and "ha[d] never encountered a career service office as nice and helpful as this one." The shopper also praised [school] staff because "[t]hey truly seem to make it their goal to help their students succeed at making the leap from education to career, which is great!"

The ESI response notes: "The Bureau does not claim that [ESI] engaged in fraudulent or deceptive conduct... Nearly every allegation in the complaint—including the misleading and out-of-context 'mystery shopper' allegations—is window-dressing that has nothing to do with the third-party loans or the causes of action the Bureau has chosen to plead."

ESI also emphasized that the complaint violates the Constitution's Due Process Clause and that the Bureau itself operates in violation of the Constitution's separation of powers.

"This unprecedented and unfounded lawsuit should be dismissed," ESI said. The CFPB "has limited authority to regulate consumer finance, but wants to override the boundaries set by Congress and extend its power."

The brief in support of ESI's motion to dismiss can be found at:
<http://www.ittesi.com/download/Brief+in+Support+of+Motion+to+Dismiss.pdf>



July 15, 2014

ID Code 00015354

ID Code 00016046

ID Code 00023908

VIA E-MAIL ONLY

Mr. Shawn Crawford
Vice President, Compliance and Regulatory Affairs
ITT Educational Services, Inc.
13000 North Meridian Street
Carmel, IN 46032-1404

Dear Mr. Crawford:

This letter is a request for updated information regarding the following adverse issues regarding ITT Campuses in various locations:

- ITT Phoenix, AZ - The current status with the Arizona Board of Nursing; copies of any further correspondence received from the Board as well as copies of any responses to said correspondence.
- ITT Louisville, KY – The current status of the lawsuit against ITT Technical Institute filed by Mr. Rodford Seabolt et al. in the Jefferson County Court, KY.
- ITT, Indianapolis, IN – The current status of the Consumer Federal Protection Bureau (CFPB) lawsuit against ITT Educational Services Inc., for predatory student lending.

Please respond by **July 25, 2014**. Until this matter is resolved, please continue to provide information to the Council as it becomes available.

If you have any questions, please contact me at (202) 336-6781 or abieda@acics.org.

Sincerely,

(b)(6)

Anthony S. Bieda

Vice President of External Affairs

From: [Anthony Bieda](#)
To: [Quentin Dean](#)
Cc: [Albert C. Gray](#)
Subject: Fwd: ESI: Files In Court To Dismiss CFPB Claim
Date: Thursday, May 01, 2014 1:22:00 PM

Please retrieve the ITT response cited below and include in our on-going review of ITT's adverse. Thanks.

Sent from my iPad

Begin forwarded message:

From: Jeff Olszewski <JOlszewski@acics.org>
Date: May 1, 2014 at 10:15:11 AM MST
To: Anthony Bieda <ABieda@acics.org>
Subject: RE: ESI: Files In Court To Dismiss CFPB Claim

About time

From: Anthony Bieda
Sent: Thursday, May 01, 2014 12:58 PM
To: Katy Fisher
Cc: Jeff Olszewski
Subject: Fwd: ESI: Files In Court To Dismiss CFPB Claim

FYI

Sent from my iPad

Begin forwarded message:

From: (b)(6)
Date: May 1, 2014 at 9:08:36 AM MST
To: abieda@acics.org
Subject: ESI: Files In Court To Dismiss CFPB Claim



ESI: Files In Court To Dismiss CFPB Claim

Post Secondary

Trace A. Urdan, Senior Analyst (415) 947-5470

ITT Educational Services (ESI) has moved to dismiss the complaint filed by the Consumer Financial Protection Bureau (CFPB) in U.S. District Court, claiming the Bureau's allegations are legally flawed, fall outside its statutory authority, and violate the Constitution. Noting that it does not originate consumer loans,

ITT alleges that the CFPB complaint is misdirected. In the CFPB complaint, which alleges improper and aggressive recruiting on the part of ITT, the company notes that the CFPB is likewise acting outside of its statutory authority. Notably however ITT makes a larger claim that the CFPB enforcement authority denies due process and is thus unconstitutional itself.

In its court filing, the company states "This unprecedented and unfounded lawsuit should be dismissed. [The CFPB] has limited authority to regulate consumer finance, but wants to override the boundaries set by Congress and extend its power."

In our opinion this is the boldest action taken by a company targeted by the CFPB to date and given the presumptive challenge to the very authority of the CFPB, could develop into a major news story - which may have the perverse effect of drawing additional negative attention to the company and the shares.

The brief in support of ESI's motion to dismiss can be found at:

<http://www.ittesi.com/download/Brief+in+Support+of+Motion+to+Dismiss.pdf>

ITT Educational Services, Inc. (ESI-NYSE)--Outperform (1) / V

Price as of 4/30/2014: \$26.06

FY 14 EPS: \$3.15

FY 15 EPS: \$3.75

Shares Out.: 25.6 MM

Market Cap.: \$667.14 MM

Sector Rating: Post Secondary, Overweight

Trace A. Urdan

Senior Research Analyst -- Education

Wells Fargo Securities, LLC

415/947-5470 (o)

415/940-0930 (m)

AIM: Tracelator

550 California St., Suite 625

San Francisco, CA 94104

I certify that: 1) All views expressed in this research report accurately reflect my personal views about any and all of the subject securities or issuers discussed; and 2) No part of my compensation was, is, or will be, directly or indirectly, related to the specific recommendations or views expressed by me in this research report.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

Consumer Financial Protection Bureau,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 1:14-cv-00292-SEB-TAB
)	
ITT Educational Services, Inc.,)	
)	
Defendant.)	
)	
)	
)	

BRIEF IN SUPPORT OF DEFENDANT’S MOTION TO DISMISS

ICE MILLER, LLP
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Thomas E. Mixdorf (#16812-49)
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THatch@gibsondunn.com

GIBSON, DUNN & CRUTCHER LLP
Douglas R. Cox (*pro hac vice* pending)
Jason J. Mendro (*pro hac vice* pending)
Lucas C. Townsend (*pro hac vice* pending)
1050 Connecticut Avenue, N.W.
Washington, DC 20036-5306
Telephone: (202) 955-8500
ut relevant terms. To the contrary, the Bureau
admits that all students signed an Enrollment

April 28, 2014

*Attorneys for Defendant
ITT Educational Services, Inc.*

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INTRODUCTION

This unprecedented and unfounded lawsuit should be dismissed. Plaintiff, the Consumer Financial Protection Bureau (the “Bureau”), has limited authority to regulate consumer finance, but wants to override the boundaries set by Congress and extend its power. Defendant ITT Educational Services, Inc. (“ITT”) does not provide consumer financial products, and its conduct as described in the Bureau’s complaint falls outside the Bureau’s jurisdiction. The complaint recognizes that the loans at issue in this case were made by third parties—not ITT—and those third parties set the terms, signed the contracts, and received the fees and interest. The Bureau’s theory that somehow it can still pursue ITT relies on fatally vague concepts of “unfairness” and “abusiveness” that violate the constitutional guarantee of Due Process. The complaint also invokes facially implausible conclusions and bare recitals of statutory elements that lack factual support. More significantly, the Bureau is an unconstitutional entity that lacks legitimate authority to pursue this lawsuit.

ALLEGATIONS OF THE COMPLAINT

The Bureau does not claim that ITT engaged in fraudulent or deceptive conduct. The complaint bases ITT’s alleged liability primarily on a five-month period in late 2011, but never alleges relevant facts specific to that time period, and repeatedly conflates ITT’s conduct with that of other, independent actors. Nearly every allegation in the complaint—including the misleading and out-of-context “mystery shopper” allegations—is window-dressing that has nothing to do with the third-party loans or the causes of action the Bureau has chosen to plead.

1. About ITT. ITT is a leading private college system that provides undergraduate and graduate degree programs at more than 140 campuses in 38 states and online. ¶ 16.¹ Each ITT campus is accredited by an accrediting agency recognized by the federal Department of

¹ References to “¶ __” refer to the Bureau’s February 26, 2014 complaint.

Education. ¶ 51. Approximately 10,000 employees implement ITT's educational programs, which blend traditional academic content with applied learning concepts aimed at helping students develop the skills and technical knowledge necessary to pursue careers in the modern economy. Since its founding in 1969, ITT has educated hundreds of thousands of students; more than 55,000 are currently enrolled in its programs. These students are generally those who have been underserved by traditional higher education: older students, low-income students, minority students, students working full-time, and single parents. ¶ 28.

ITT is subject to extensive federal and state oversight. As an "institution of higher education" under Title IV of the Higher Education Act, 20 U.S.C. §§ 1001, 1002(b), ITT must satisfy substantial monitoring, disclosure, and reporting requirements to participate in Title IV federal financial aid programs. *E.g.*, 20 U.S.C. § 1094(a)(5), (a)(17); *id.* § 1097a; *see also* ¶ 25. Among other things, ITT must receive at least 10% of its revenue from nonfederal sources, 20 U.S.C. § 1094(a)(24), and its students may not exceed a specified rate of default on federally guaranteed loans, *id.* §§ 1085(a), 1087c(d). In addition, ITT is extensively regulated by the Department of Education, the Securities and Exchange Commission, state educational authorities, and accrediting agencies.

This matter involves private loans made years ago by third parties. The private loans fell into two categories: CUSO and PEAKS. ITT did not originate or service these third-party loans, which were designed to help students have access to funding to pursue their educations after the financial crisis made it difficult for many students to obtain financial aid. ¶ 99.

2. *CUSO*. In 2008, representatives from a consulting firm met with ITT about a third-party loan program that would be operated by a credit union service organization ("CUSO"). Under the program, loans were made by the member credit unions from CUSO funds beginning

in March 2009; ITT provided certain guarantees to the CUSO; and no CUSO loans were made after the end of 2011. ¶¶ 120-21. The complaint does not allege that ITT originated or owned any CUSO loans, or that ITT had any right to interest or fees generated by the loans.

3. *PEAKS*. In 2009, another independent entity approached ITT with a proposal for a third-party private loan program called PEAKS. Under the PEAKS program, a third-party lender issued loans to ITT students. Those loans were in turn purchased by a trust. ITT served as guarantor to the trust, but was not among its beneficiaries. ¶¶ 129-30. The PEAKS program disbursed its first loan in February 2010, and disbursed its final loan before July 21, 2011, the earliest date on which the Bureau claims a violation of the Consumer Financial Protection Act. ¶¶ 130, 132, 165, 173, 182. There is no allegation that ITT originated or owned any PEAKS loans, or that ITT had any right to interest or fees generated by those loans.

4. *Temporary Credit*. In early 2008, ITT began to extend Temporary Credit as a last resort to qualified students unable otherwise to cover the full cost of their upcoming academic year. ¶ 99. Temporary Credit was due and payable to ITT within 12 months and generally at the end of the academic year, which lasts nine months. ¶¶ 6, 99. ITT never charged interest or fees, including origination fees, on Temporary Credit balances. *Id.*

ITT fully disclosed the terms of Temporary Credit to students. As the Bureau admits, the terms of Temporary Credit were set forth in a Cost Summary and Payment Addendum (“Cost Summary”) attached to the Enrollment Agreement that all students were required to sign upon enrolling with ITT. ¶¶ 66, 102-03; Ex. A (Enrollment Agreement); Ex. B (Cost Summary); Ex. C (Course Catalog, incorporated in Enrollment Agreement). Each Cost Summary discloses that Temporary Credit carries an “Annual Percentage Rate” of 0% and a “Finance Charge” of \$0. Cost Summaries also disclose how many payments students must make and when they must

make them, and that there are no late charges for Temporary Credit, but that late payment constitutes “a default under the Agreement.” Ex. B, at 3.²

5. *Operation of CUSO and PEAKS Loans.* Each year, students at institutions of higher education across the country assemble a “package” of financial aid that covers their educational expenses. For new students at ITT, the financial aid process during the enrollment period involved signing an Enrollment Agreement and Cost Summary that disclosed the terms and conditions of any Temporary Credit awarded. ¶¶ 102-03.

For *continuing* students, the “repackaging” process was different. Continuing students sometimes owed a balance to ITT due to their failure to satisfy their Temporary Credit balances. Consistent with ITT’s policy, which is identical to that of most other colleges—and which every student signed as part of the Enrollment Agreement—these students could not continue in their educational program until they satisfied their account balances. Students could pay using their own savings, money borrowed from family and friends, a credit card, or a private third-party loan. Although the complaint alleges that many students elected to pay their balances with a CUSO or PEAKS loan (¶ 171), it does not allege that any student was required to do so by ITT, or that ITT received any benefit if they chose such a loan over any other option.

Both CUSO and PEAKS loans were available only to students who had completed the first academic year of their program. ¶ 114 (private loans “financed students’ second year tuition gap”). Although ITT reserved the right to prevent students from continuing their studies until any outstanding Temporary Credit balances were satisfied, ITT took steps to ensure that students who repackaged their financial aid could continue. For example, ITT would sometimes, in its discretion, extend additional Temporary Credit to cover any gap between students’ financial aid

² “It is well settled that in deciding a Rule 12(b)(6) motion, a court may consider ‘documents attached to a motion to dismiss . . . if they are referred to in the plaintiff’s complaint and are central to his claim.’” *Brownmark Films, LLC v. Comedy Partners*, 682 F.3d 687, 690 (7th Cir. 2012) (citation omitted; ellipsis in original).

packages and the cost of attending school if, for any reason, they could not otherwise satisfy their Temporary Credit balances. ¶ 143. ITT also allowed students with outstanding Temporary Credit balances upon graduation to enter into an interest-free installment plan to pay that debt over time; ITT also offered graduating students with Temporary Credit balances a discount on their Temporary Credit balance if they paid in a lump sum at the time of graduation. ¶ 144.

The complaint does not allege that, in offering Temporary Credit and in helping students obtain tuition assistance from third-party providers, ITT originated, received interest from, or owned any private education loans.

6. “*Mystery Shoppers.*” The complaint centers on a collection of excerpted, undated quotations from “mystery shoppers.” ¶¶ 35-36, 41-45, 54, 59-62, 67-84, 92-94, 107. ITT voluntarily initiated the mystery shopper program to identify instances of noncompliance with company policies; ITT hired mystery shoppers to search for misconduct and provide ITT with the critical assessments that the Bureau now brandishes. ¶¶ 35, 41, 54, 62, 67. Such corporate self-evaluation programs are common. *E.g., Joseph v. Sasafra.net, LLC*, 689 F.3d 683, 688 & n.20 (7th Cir. 2012); *Logan v. Denny’s, Inc.*, 259 F.3d 558, 563-65 (6th Cir. 2001). As is clear on their face, the partial quotations included in the complaint pertain only to the initial recruiting and financial aid process for new students. Significantly, there are no mystery shopper quotations in the paragraphs directed to the repackaging stage, the only stage where PEAKS and CUSO loans were available. ¶¶ 85-87, 138-42.

The complaint provides only out-of-context, edited quotations from select mystery shopper reports. The full quotations reveal a starkly different picture. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 568 n.13 (2007) (district courts may take notice of full quotations “from which the truncated quotations were drawn”). For example, the complaint quotes one mystery

shopper as describing ITT’s insistence on following up with the prospective student as “a bit invasive” (¶ 77 (emphasis omitted)), yet omitted the remainder of the shopper’s report stating that she “was pleasantly overwhelmed at how willing and excited [ITT] was to help me in finding a career,” and “ha[d] never encountered a career service office as nice and helpful as this one.” The shopper also praised ITT staff because “[t]hey truly seem to make it their goal to help their students succeed at making the leap from education to career, which is great!!” Ex. D, at 3.³

7. *The Claims.* The Bureau touts this as a “predatory lending” suit and hails it as the Bureau’s “first public enforcement action against a company in the for-profit college industry.”⁴ The complaint asserts four counts—three counts under the Consumer Financial Protection Act (“CFPA”), 12 U.S.C. §§ 5481 *et seq.*, and one count under Regulation Z implementing the Truth in Lending Act (“TILA”), 15 U.S.C. §§ 1601 *et seq.* and 12 C.F.R. Part 1026.

Count 1 asserts that the third-party loans were “unfair” because ITT allegedly subjected students to undue influence or coercion “at or around the time the students signed the ITT Private Loan contracts”—that is, during the repackaging process for continuing students. ¶ 160.⁵

Count 2 asserts that the third-party private loans were “abusive”—and that ITT, not the third-party lenders, is responsible for that “abuse”—because ITT allegedly took unreasonable advantage of continuing students’ inability to protect their interests in selecting private loans during the repackaging process. ¶¶ 167, 170.

Count 3, which overlaps with count 2, asserts that the third-party loans were “abusive”

³ The Bureau’s attempt to tar ITT with ITT’s own mystery shopper program would be objectionable even if context were provided. ITT created the program in a good-faith effort to help ensure *compliance* with applicable law, and to check on its employees’ conduct. The Bureau’s tactics here will dissuade other educational institutions from maintaining similar self-evaluation programs.

⁴ See CFPB Sues For-Profit College Chain ITT For Predatory Lending (Feb. 26, 2014), <http://www.consumerfinance.gov/newsroom/cfpb-sues-for-profit-college-chain-itt-for-predatory-lending/>.

⁵ The complaint’s references to “ITT Private Loans” are curious and wrong, given that no such thing exists: the complaint admits that ITT did not enter into a contract for the private loans at issue with any student. ¶¶ 11, 98, 110, 130 (third parties, not ITT, originated the loans). The “ITT Private Loans” phrase is misleading rhetoric.

because ITT allegedly took unreasonable advantage of continuing students' reliance on ITT to act in their interests. ¶¶ 175, 178.

Each of counts 1–3 (the “CFPA counts”) is limited to the period from “July 21, 2011 through December 2011” (¶¶ 165, 173, 182); none of these claims is based on Temporary Credit.

Count 4 asserts that ITT violated Regulation Z and TILA because the discount offered to graduating students who paid their Temporary Credit balances in a lump-sum supposedly constituted a “finance charge” for graduating students who declined the discount in favor of paying their Temporary Credit debt in installments, and ITT supposedly did not make the disclosures required when a finance charge is imposed. ¶¶ 188-89. The complaint claims that this purported violation occurred “from approximately March 2009 through the present.” ¶ 191.

LEGAL STANDARDS

A well-pleaded complaint must state a claim that is “plausible on its face” and contain sufficient factual allegations to allow a court “to draw a reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Twombly*, 550 U.S. at 570; *Adams v. City of Indianapolis*, 742 F.3d 720, 728 (7th Cir. 2014). Conclusory allegations are “not entitled to be assumed true.” *Iqbal*, 556 U.S. at 681. The complaint must allege facts “showing” that the Bureau is entitled to relief. Fed. R. Civ. P. 8(a)(2).

The CFPA counts are limited to the period from July 21, 2011 through December 2011. Thus, factual allegations concerning conduct outside that five-month period do not support the claims. *E.g.*, ¶¶ 12, 25, 46, 99, 110, 114, 127, 129-32, 135-36, 152, 154. Further, no PEAKS loans were disbursed after July 21, 2011 (¶ 132); thus, allegations concerning that program are not actionable at all (*e.g.*, ¶¶ 114, 129-32, 135-37). In any event, inasmuch as the complaint alleges no substantive differences between PEAKS and CUSO loans, ITT’s arguments apply equally to both types of third-party loan.

Counts 1 and 2 also are limited to acts and practices at the time students selected or entered into third-party loans, which were available only in the repackaging stage for continuing students. ¶¶ 160, 170, 177, 179. Therefore, only allegations concerning repackaging and third-party student loans are relevant to these counts (¶¶ 85-87, 97-98, 114-155); allegations concerning new student enrollment and the initial financial aid process are irrelevant (¶¶ 22-84, 88-96, 99-113). Count 3 arguably can be read to include the initial financial aid process, and count 4 includes payments in connection with Temporary Credit.

ARGUMENT

Each of the claims fails as a matter of law and should be dismissed with prejudice.

I. THIS ACTION VIOLATES THE CONSTITUTION

A. The Bureau Is An Unconstitutional Entity.

Title X of the Dodd-Frank Act insulates the Bureau from any significant checks by the Executive or Legislative Branches, in violation of the Constitution's separation of powers.

1. No Presidential Oversight. The Constitution vests the Executive power in the President, who must "take Care that the Laws be faithfully executed." U.S. Const. art. II, § 3. "The President cannot 'take Care that the Laws be faithfully executed' if he cannot oversee the faithfulness of the officers who execute them." *Free Enter. Fund v. Pub. Co. Accounting Oversight Bd.*, 130 S. Ct. 3138, 3147 (2010); *see also Myers v. United States*, 272 U.S. 52, 134 (1926). When the President "loses confidence in the intelligence, ability, judgment, or loyalty" of a subordinate, the President "must have the power to remove [the subordinate] without delay." *Myers*, 272 U.S. at 134.

Even a limited ability to remove officers, such as a "good-cause" requirement, restricts the President's ability to control Executive officers. *Free Enter. Fund*, 130 S. Ct. at 3147, 3152. The limitations on removal here are far more restrictive than a "good cause" provision. The

Director, who serves a five-year term, may be removed by the President only “for inefficiency, neglect of duty, or malfeasance in office.” 12 U.S.C. § 5491(c)(3). Such restrictions have been upheld only where the organic statute limits the agency’s responsibilities or otherwise checks its authority. *See, e.g., Morrison v. Olson*, 487 U.S. 654, 695-96 (1988); *Humphrey’s Ex’r v. United States*, 295 U.S. 602, 628 (1935).

The Director, by contrast, has lengthy tenure and purports to have broad jurisdiction and significant power over numerous industries without any check on his authority by the Chief Executive. Further, the Bureau is purportedly authorized to sue in the name of the United States, a core Executive power. *Morrison*, 487 U.S. at 691; *see also* 12 U.S.C. § 5564. Without meaningful Presidential control over the Director, the Director could initiate suits advancing his—and not the President’s—views on the proper construction of federal laws. Remarkably, the Director can delegate any or all of his significant powers to *any* “duly authorized employee, representative, or agent.” 12 U.S.C. § 5492(b). This further undermines the President’s control over Executive officials. *Buckley v. Valeo*, 424 U.S. 1, 136 (1976).⁶

2. *No Congressional Control Of Funding.* The Director may unilaterally claim up to 12% of the Federal Reserve’s budget, currently about half a billion dollars, without Congress’s approval. 12 U.S.C. § 5497(a). The CFPA provides that “the funds derived from the Federal Reserve System . . . shall not be subject to review by the Committees on Appropriations” of the House and Senate. *Id.* § 5497(a)(2)(C). Congress cannot even derivatively influence the Bureau

⁶ The Director’s ability to appoint the Deputy Director also violates the Appointments Clause. The only Executive Branch officials, besides the President, who may appoint inferior officers such as the Deputy Director are the heads of Executive departments who are themselves accountable to the President. U.S. Const. art. II, § 2, cl. 2; *Free Enter. Fund*, 130 S. Ct. at 3162. The Deputy Director, however, is “appointed by the Director,” 12 U.S.C. § 5491(b)(5), who is not the head of an Executive department. Under the Appointments Clause, a department is “a freestanding component of the Executive Branch, not subordinate to or contained within any other such component.” *Free Enter. Fund*, 130 S. Ct. at 3163. The Bureau is “established in the Federal Reserve System,” 12 U.S.C. § 5491(a), which is led by the Board of Governors of the Federal Reserve System, an “independent regulatory agency,” 44 U.S.C. § 3502(5).

by restricting the budget of the Federal Reserve, because its revenues also are exempt from the appropriations process. *Id.* § 244. The Director thus enjoys unprecedented power over the regulation of private sector activity and exclusive control of more than half a billion dollars, outside the appropriations process. *See also* U.S. Const. art. I, § 7, cl. 1.⁷

* * *

Each of these breaks in the constitutional order renders the Bureau’s authority unconstitutional. Thus, the Bureau lacks power to bring this action and its complaint must be dismissed. *Ass’n of Am. Railroads v. U.S. Dept. of Transp.*, 721 F.3d 666, 673 (D.C. Cir. 2013).

B. This Enforcement Action Violates Due Process Because Regulated Parties Lack Fair Notice Of What Conduct Is Prohibited.

The Bureau asserts that ITT engaged in “unfair” and “abusive” acts or practices. 12 U.S.C. § 5536(a)(1)(B). Both on their face and as applied, those terms fail to provide sufficient notice of what is proscribed and violate the Due Process Clause of the Fifth Amendment.

The requirement that laws “give fair notice of conduct that is forbidden or required” is fundamental to Due Process. *FCC v. Fox Television Stations, Inc.*, 132 S. Ct. 2307, 2317 (2012). The void for vagueness doctrine ensures that (1) “regulated parties . . . know what is required of them” and (2) there is sufficient “precision and guidance” such that “those enforcing the law do not act in an arbitrary or discriminatory way.” *Id.*; *see also United States v. Williams*, 553 U.S. 285, 304 (2008). Both Due Process requirements are trampled by the complaint.

A standardless prohibition of “unfair” acts and practices is “as vague as they come.” *Belser v. Blatt, Hasenmiller, Liebsker & Moore, LLC*, 480 F.3d 470, 474 (7th Cir. 2007). That

⁷ The CFPA also limits judicial oversight in ways that are relevant to separation of powers analysis. 12 U.S.C. §§ 5512(b)(4)(B), 5513(a) & (c)(3)(B)(ii). Some constitutional flaws in the CFPA are being litigated in other courts, but have not resulted in a decision binding on this Court. *Cf. State Nat’l Bank v. Lew*, 958 F. Supp. 2d 127 (D.D.C. 2013) (dismissing pre-enforcement challenge to Bureau’s constitutionality on standing and ripeness grounds), *appeal pending*, No. 13-5247 (D.C. Cir.); Order, *Consumer Fin. Prot. Bureau v. Morgan Drexen Inc.*, No. 13-1267 (C.D. Cal. Jan. 10, 2014) (denying motion to dismiss Bureau enforcement action on constitutional grounds), *appeal dismissed on jurisdictional grounds*, No. 14-55333 (9th Cir. Apr. 11, 2014).

vagueness is compounded by the CFPA, which provides that the Bureau has no authority to declare an act or practice “unfair” unless there is a “reasonable basis to conclude” that “(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 to competition.” 12 U.S.C. § 5531(c)(1). What constitutes “substantial injury” or is “reasonably avoidable” is as amorphous—and subjective—as the term “unfair.” The Bureau’s own Enforcement Guideline fails to define these terms with any precision, stating for example that “substantial injury” may take the form of “monetary harm,” but also some “emotional impacts may amount to or contribute to substantial injury.”⁸

Nor has the Bureau attempted to provide meaningful guidance through regulation, instead asserting that its interpretation of “unfair” practices “may” be informed by case law, enforcement actions, and *ad hoc* policy statements. See CFPB Supervision and Examination Manual, at UDAAP 1 n.2. This obviously is not fair notice. Such a general reference—which is not even binding on the Bureau—provides no fair warning that third-party private loans, which are common in the already highly regulated field of educational institutions, could lead to an enforcement action against ITT by the Bureau.

The prohibition of “abusive” acts is even less defined. The Seventh Circuit has described the term “abusive” as “vague,” *Ustrak v. Fairman*, 781 F.2d 573, 580 (7th Cir. 1986), and the CFPA provides no meaningful guidance. The CFPA states that an “abusive” act or practice, in relevant part, is one that “takes unreasonable advantage of . . . the inability of the consumer to protect the interests of the consumer in selecting or using a consumer financial product or service, or . . . the reasonable reliance by the consumer on a covered person to act in the interests

⁸ CFPB Supervision and Examination Manual, at UDAAP 2 (Oct. 2012), http://files.consumerfinance.gov/f/201210_cfpb_supervision-and-examination-manual-v2.pdf.

of the consumer.” 12 U.S.C. § 5531(d). These conditions, apparently dependent on the subjective experience of the consumer, add more uncertainty. *See Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 24 (1993) (Scalia, J., concurring) (“‘Abusive’ . . . does not seem to me a very clear standard—and I do not think clarity is at all increased by adding the adverb ‘objectively’ or by appealing to a ‘reasonable person[’s]’ notion of what the vague word means”).

The Bureau’s Director has acknowledged the vagueness. In 2012, the Director testified that the term “abusive” is “a little bit of a puzzle because it is a new term,” and that the Bureau

ha[s] been looking at it, trying to understand it, and we have determined that that is going to have to be a fact and circumstances issue. . . . Probably not useful to try to define a term like that in the abstract; we are going to have to see what kind of situations may arise where that would seem to fit the bill under the prongs.

How Will the CFPB Function Under Richard Cordray: Hearing Before the Subcomm. on TARP, Financial Services and Bailouts of Public and Private Programs, 112th Cong. 112-107, at 69 (2012). This approach maximizes the Bureau’s power at the expense of the Bureau’s targets, and is constitutionally impermissible.

The Bureau’s “know it when I see it” approach leaves regulated entities to “guess at its meaning and . . . application[,] violat[ing] the first essential of due process of law.” *Connally v. Gen. Constr. Co.*, 269 U.S. 385, 391 (1926); *see also Fox Television*, 132 S. Ct. at 2317.

Accordingly, the CFPA claims should be dismissed as contrary to the Due Process Clause.

Gates & Fox Co. v. OSHRC, 790 F.2d 154, 156 (D.C. Cir. 1986) (reversing agency’s application of unconstitutionally vague regulation).⁹

⁹ Notions of “unfairness” and “abusiveness” also fail to lay down “an intelligible principle to which the [Bureau] is directed to conform,” resulting in an unconstitutional delegation of Legislative power. *Whitman v. Am. Trucking Ass’ns, Inc.*, 531 U.S. 457, 472 (2001) (citation omitted). For example, where Congress purported to confer on an agency “authority to regulate the entire economy on the basis of no more precise a standard than . . . assuring ‘fair competition,’” the result was unconstitutional. *Id.* at 474 (citing *A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495, 531 (1935)). The charge to counter “unfair” and “abusive” practices in consumer finance is no less standardless and sweeping.

II. ITT IS NOT PROPERLY SUBJECT TO THIS ENFORCEMENT ACTION

The complaint must also be dismissed for failure to state a claim because it has alleged no facts showing that ITT, an educational institution, falls within the Bureau’s enforcement jurisdiction. The Bureau’s authority under the CFPB to prevent unfair or abusive acts or practices is limited to “covered person[s]” and “service provider[s].” 12 U.S.C. § 5536(a)(1). ITT is neither. The Act separately excludes “merchants, retailers, and other sellers of nonfinancial goods or services”—such as ITT—from the Bureau’s authority. *Id.* § 5517(a). These statutory terms bar this suit.

A. ITT Is Not A “Covered Person.”

The CFPB defines “covered persons” as “any person that engages in offering or providing a consumer financial product or service.” 12 U.S.C. § 5481(6)(A). A financial product or service means “extending credit and servicing loans, including . . . brokering . . . extensions of credit.” *Id.* § 5481(15)(A)(i). It also means “providing financial advisory services,” including “credit counseling” and “services to assist [with] debt management or debt settlement.” *Id.* § 5481(15)(A)(viii). The complaint fails to allege that ITT offered, provided, or brokered any extension of credit or provided financial advisory services.

1. Apart from a single conclusory assertion that merely recites the statutory standard (¶ 17), the complaint does not allege that ITT “offer[ed]” or “provid[ed]” CUSO or PEAKS loans—the private student loans that are the basis for all of the Bureau’s CFPB claims. ¶¶ 159, 169, 177. Bald assertions that ITT “designed” various “private loan *programs*” (*e.g.*, ¶ 11 (emphasis added)) obviously do not, even on their own terms, transform ITT into an offeror or provider of consumer *loans*. That an educational institution may be deemed to create a “program” to accommodate student demand for a third-party lender’s financial products or services does not mean that the educational institution itself is the lender.

The complaint admits that third parties, and not ITT, originated the private loans. ¶¶ 11, 18 (“lenders offering student loans”), 98, 110, 130 (“The originating bank made the loans . . .”). The complaint’s use of “ostensible” in describing these third-party lenders is wholly rhetorical.

The complaint fails to allege facts showing that ITT sought to enter into a bargain with any student regarding PEAKS or CUSO loans, that any student formed a PEAKS or CUSO contract with ITT, or that ITT had any right of action against a student who defaulted on a PEAKS or CUSO loan—all hallmarks of lending activity. *Wells Fargo Bus. Credit v. Hindman*, 734 F.3d 657, 666 (7th Cir. 2013). Moreover, absent any alleged contract between ITT and a student for a private loan, the Bureau’s demand for “[r]escission against ITT” demonstrates the irrationality of this claim. Compl. at 34; *see also* 12 U.S.C. § 5565(a)(2)(A) (authorizing only “rescission or reformation *of contracts*”) (emphasis added).¹⁰

Given that ITT received no fees or interest under the third-party private loan contracts, it is unclear on what basis the complaint seeks restitution, disgorgement, and rescission. To the extent the Bureau seeks to recover from ITT the payments made by students to third-party lenders pursuant to their lending contracts, the complaint should be dismissed under Federal Rule of Civil Procedure 12(b)(7) for failure to join those third-party lenders as necessary parties. *United States ex rel. Hall v. Tribal Dev. Corp.*, 100 F.3d 476, 479-81 (7th Cir. 1996).

2. Because ITT did not offer the third-party loans, the Bureau’s theory that it may regulate ITT as a “covered person” boils down to the contention that ITT engaged in “brokering . . . extensions of credit” or “providing financial advisory services.” 12 U.S.C. § 5481(15)(A)(i), (15)(A)(viii). The CFPA defines a “broker” as “any person engaged in the business of effecting

¹⁰ Guarantying a loan also does not equate to offering or providing it. To read “guarantying” a loan as “providing” one would mean that the Bureau’s jurisdiction could reach any person who makes loans possible or more likely. Similarly, underwriting a loan does not equate to offering or providing a loan. Regardless of the source of the underwriting criteria (¶ 121), the loans could not have been made without the actual provider—a third party, not ITT—giving up its own money.

transactions . . . for the account of others.” *Id.* § 5301(15) (cross-referencing 15 U.S.C. § 78c); *see also Black’s Law Dictionary* 219 (9th ed. 2009) (a “broker” is “employed to make bargains and contracts between other persons in matters of trade, commerce, or navigation”). The complaint fails to allege that ITT—an educational company—engaged in the *business* of effecting private student loans for others. Nor would such allegations be plausible. *Twombly*, 550 U.S. at 557. The complaint does not allege that ITT worked for private banks, actively recruited borrowers as a business, or received commissions or brokerage fees. *SEC v. George*, 426 F.3d 786, 797 (6th Cir. 2005). Indeed, the complaint concedes that private loans covered a small portion of continuing students’ tuition (“the second-year tuition gap,” ¶ 8); thus, brokering loans could not plausibly be deemed ITT’s “business.” 69 Am. Jur. 2d *Securities Regulation—Federal* § 303 (a broker “must conduct such defined activity as a business”).

The Bureau nonetheless asserts that ITT engaged in brokering by “serving as, and holding itself out as, an intermediary” between students and third-party lenders, and “arranging the loans for the students.” ¶ 18. These activities do not constitute “brokering” under the CFPA. The Bureau’s overbroad construction of “brokering” would extend its enforcement authority to all persons who assist another in completing an administrative process. Institutions of higher education across the country, for example, are *required* to inform students of the availability of loans and assist them in the process of securing financial aid—and this function is already regulated by the Department of Education. 20 U.S.C. § 1019a. There is no indication that the Department has ever considered schools to be “brokering” loans when they offer students statutorily-required assistance navigating the financial aid process, or that Congress intended to convert financial-aid employees into “brokers” subject to the Bureau’s jurisdiction.

In any event, the complaint fails to allege factual support for the Bureau’s theory. As

noted, *all* of the mystery shopper allegations pertain to the initial financial aid stage. The few allegations that address the repackaging stage, where continuing students became eligible for private loans, are vague and conclusory. *E.g.*, ¶¶ 85-87 (asserting only that the repackaging stage was “similarly rushed and controlled”); ¶ 97 (asserting that ITT conducted the repackaging stage “[u]sing the tactics described above and others”). The Bureau pleads no factual support for its assertion that ITT held itself out as the “sole intermediary” between third-party lenders and students, or that it did “most of the work in completing the paperwork” for private loans. ¶ 122. That omission is telling, because the Bureau, using its subpoena power, has obtained extensive discovery from ITT and others and would have alleged supporting facts had they existed. In short, there is no basis for the “brokering” theory.

3. The complaint asserts that ITT was also a covered person because it supposedly provided “financial advisory services” to students. 12 U.S.C. § 5481(15)(A)(viii). Although the CFPA does not define “financial advisory services,” the legislative history makes clear that the term “financial product or service,” which includes financial advisory services, was meant to cover only those non-banking services “so closely related to banking . . . as to be a proper incident thereto.” 12 C.F.R. § 225.28(a); S. Rep. No. 111-176, at 160. Any attempt to stretch “financial advisory services” to cover the normal assistance that all college financial aid employees provide to students—clearly not banking—would be unlawful. *See Am. Bar Ass’n v. FTC*, 430 F.3d 457, 467-68 (D.C. Cir. 2005).

Further, the complaint asserts that ITT triggered the Bureau’s enforcement authority by providing “substantial advice and assistance to students enrolling in ITT programs regarding loans or other available financial aid.” ¶ 19. But assertions regarding assistance to students at the *enrollment* stage, again, could be brought against employees of any university in the country;

and they have no bearing on those CFPA counts pleaded here which pertain only to the later repackaging stage for continuing students. ¶¶ 159-60, 169-71, 177.

B. ITT Is Not A “Service Provider.”

The Bureau also incorrectly asserts that it may sue ITT as a “service provider.” 12 U.S.C. § 5536(a)(1). A “service provider” is one who “provides a material service to a covered person in connection with” the covered person’s offering of a “consumer financial product.” Presumably, the Bureau views the covered persons in this context to be the third-party lenders, and the consumer financial products to be the third-party student loans. A material service includes participating in the “designing, operating, or maintaining” of the consumer financial product—*i.e.*, the third-party loans. *Id.* § 5481(26)(A)(i).

The complaint concedes that both the third-party loans programs were designed in 2008 and 2009—long before July 21, 2011, when the Bureau first asserts a violation of the CFPA. ¶¶ 114, 120. The Bureau cannot exercise enforcement authority over ITT for “designing” a consumer financial product or service before the Bureau obtained enforcement power on July 21, 2011. 12 U.S.C. § 5581(d); 75 Fed. Reg. 57,252 (Sept. 20, 2010). Nor do the relevant provisions of the CFPA apply retroactively to reach events in 2008, 2009, and 2010. *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988); *see also Molosky v. Wash. Mut., Inc.*, 664 F.3d 109, 113 n.1 (6th Cir. 2011) (provisions of Dodd-Frank not retroactive).

The complaint also fails to allege that ITT “operated” or “maintained” any extension of credit or loan servicing in connection with the third-party loans. Providing financial aid assistance *to students* is not equivalent to providing a “material service” *to third-party lenders* in connection with operating or maintaining third-party loans. The phrase “material service . . . in connection with” means a connection between the service and the offer or sale of a consumer loan that matters to the covered person. *Chadbourne & Parke LLP v. Troice*, 134 S. Ct. 1058,

1066 (2014). Thus, there is no basis for concluding that ITT was a “service provider” that materially assisted in “operating” or “maintaining” third-party student loans.¹¹

C. ITT Is Excluded From The Bureau’s Authority As A Seller Of Nonfinancial Goods And Services.

The CFPB expressly excludes entities like ITT—sellers of nonfinancial goods or services—from the Bureau’s enforcement jurisdiction. The statute excludes companies that “exten[d] credit directly to . . . consumer[s],” so long as the credit extended is used to “enabl[e] . . . consumer[s] to purchase . . . nonfinancial good[s] or service[s] directly from the merchant, retailer, or seller.” 12 U.S.C. § 5517(a)(2)(A)(i). Any extension of credit to students would be excluded from the Bureau’s jurisdiction because such loans enabled students to purchase nonfinancial services—educational services—directly from ITT. The Bureau admits that the purpose of the third-party private loans was “to pay for a portion” of students’ tuition (¶ 17), and that the loans “financed students’ second year tuition gap” (¶ 114)—concessions that exempt ITT from the Bureau’s enforcement authority. 12 U.S.C. § 5517(a)(2)(A)(i).

It is no answer that CUSO and PEAKS loans supposedly were “intended” to allow students to pay Temporary Credit balances. ¶ 114; *see also* ¶¶ 132, 135-36. Like PEAKS and CUSO loans, Temporary Credit is also an extension of credit to allow students to purchase educational services directly from ITT. A student’s decision to replace one exempt form of debt with another does not move ITT out of the statutory exclusion.

* * *

The CFPB is not a vehicle for regulating higher education through the guise of consumer financial protection. Public policy questions concerning whether particular college degrees are

¹¹ The Bureau also has stated that “service providers” are entities to whom covered persons have “outsource[d]” functions that would otherwise fall within the Bureau’s jurisdiction. CFPB Bulletin 2012-03, at 1. The complaint fails to allege that any covered person outsourced functions to ITT, or that the assistance ITT supposedly provided to students was an exercise of that delegated authority.

worth students' investments are widely debated. The Bureau's attempt to impose liability on ITT for helping students pursue degrees that the Director, in his discretion, may deem not "worth it" would set a limitless precedent that could be applied against *all* institutions of higher education. Consistent with the CFPA, the Court should reject the slippery slope that this action invites and dismiss the complaint.

III. THE BUREAU HAS NOT ADEQUATELY ALLEGED A VIOLATION OF THE CONSUMER FINANCIAL PROTECTION ACT

Wholly apart from these constitutional and statutory deficiencies, the complaint also fails to state a claim on which relief can be granted. The complaint asserts that ITT violated the CFPA by engaging in "unfair" and "abusive" conduct, 12 U.S.C. §§ 5531(a), 5536(a)(1)(B), but alleges only "[t]hreadbare recitals of the elements of a cause of action" that are "not entitled to be assumed true." *Iqbal*, 556 U.S. at 678, 681. Because no factual allegations allow the Court "to draw a reasonable inference that [ITT] is liable for the misconduct alleged," the CFPA counts must be dismissed. *Adams*, 742 F.3d at 728; *see also Iqbal*, 556 U.S. at 678; *Twombly*, 550 U.S. at 570.¹²

A. Count 1: The Complaint Fails To Allege Adequately That ITT Engaged In Unfair Acts Or Practices.

Under the CFPA, an act or practice is "unfair" 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 to competition." 12 U.S.C. § 5531(c)(1). The complaint fails to satisfy these elements.

¹² In paragraphs 33, 44-45, 48, 50-54, and 72 of the complaint, the Bureau accuses ITT of misleading students. Deception, however, is not an element of any claim pleaded in the complaint, and thus should be ignored. To the extent they are deemed relevant, such allegations sound in fraud and must be pleaded with specificity. Fed. R. Civ. P. 9(b); *Pirelli Armstrong Tire Corp. Retiree Med. Benefits Trust v. Walgreen Co.*, 631 F.3d 436, 446-47 (7th Cir. 2011). Because the complaint fails to plead the "the who, what, when, where, and how" of any purported deception, these paragraphs should be disregarded for this additional reason. *Bank of Am., N.A. v. Knight*, 725 F.3d 815, 818 (7th Cir. 2013) (quoting *DiLeo v. Ernst & Young*, 901 F.2d 624, 627 (7th Cir. 1990)).

1. The Complaint Fails To Allege That Students Suffered “Substantial Injury.”

The Bureau asserts that since July 2011, ITT students suffered “substantial injury” when students supposedly were “pressured” into taking “loans that they could not afford, did not want, did not understand, or did not even know they had.” ¶ 162. No factual allegation in the complaint supports such a conclusion.

The complaint fails to provide factual support for conclusory assertions regarding what “[s]ome students” wanted, understood, or knew when they “took out ITT Private Loans.” ¶¶ 140-42; *Adams*, 742 F.3d at 728. All the mystery shopper quotes involve individuals paid by ITT to root out instances of noncompliance at the initial financial aid stage; the complaint alleges no facts concerning the subsequent repackaging stage. Even if the mystery shopper allegations were relevant to the repackaging stage, the complaint fails to tie those allegations to the five-month period that is the subject of count 1. Notably, the complaint’s reference to “8,600 students” is not tied to that period either, but floats free of any time period at all.

The complaint also erroneously assumes that students suffered “substantial injury” by taking loans that were “unaffordable.” ¶ 153. “Unaffordable” is a vague and subjective concept found nowhere within the CFPA. No authority holds that ITT had a legal duty to ensure that its students could “afford” loans that they took from third-party lenders. To the contrary, the Department of Education *requires* schools to permit students to borrow up to the maximum amount of federal loans they can receive. 34 C.F.R. § 685.301(a)(3). “[A] statutory change would be required to allow an institution to directly limit or control student borrowing.” 76 Fed. Reg. 34,386, 34,416 (June 13, 2011); *see also* 20 U.S.C. § 1087tt(c); 34 C.F.R. § 685.301(a)(8). Nor is there a discernible standard against which ITT, or this Court, could determine whether a loan is “affordable,” a term meaning wildly different things depending on context. The Bureau

has a 213-page rule attempting to define the affordability of a mortgage, 12 C.F.R. § 1026.43(c); 78 Fed. Reg. 6408 (Jan. 30, 2013), but there are no standards for measuring the affordability of a student loan.

The Bureau attempts to equate unaffordability here with high projected or actual aggregate default rates (¶ 162), but never alleges what default rate the Bureau would deem acceptable, never states whether affordability should be associated with projected or actual default rates, and never explains how an individual student is harmed by the loan experience of others. This ambiguity highlights the arbitrariness of the Bureau’s regulation-by-litigation approach. If the Bureau wants to develop an approach for regulating private student loans using a cut-off default rate, it should propose a rule, with public notice and comment, instead of attempting to establish one in this lawsuit. The lack of fair notice of what constitutes an “unaffordable” student loan violates Due Process. *Fox Television*, 132 S. Ct. at 2317.¹³

2. The Complaint Fails To Allege That ITT Caused The Asserted Injury.

The complaint also fails to allege adequately that ITT’s acts or practices “cause[d] or [were] likely to cause” substantial injury to students. 12 U.S.C. § 5531(c). The Bureau asserts that the supposed injury arose “at or around the time the students signed the [private loan] contracts” (¶ 160)—not at the earlier financial aid stage—during five months in late 2011. The complaint asserts only generalities and legal conclusions. ¶¶ 85-87, 97-98.

The complaint asserts that the “financial aid process . . . was rushed and controlled” (¶ 160), but no facts tie the allegations in paragraphs 63–84, pertaining to the mystery shoppers and the initial financial aid process, to the relevant repackaging stage, or even to the relevant five

¹³ Many students default on student debt for reasons having nothing to do with the acts of lenders or educational institutions. *See, e.g.*, Brittany Hackett, “Why are community college students defaulting at such high rates?” Cmty. Coll. Daily (Mar. 24, 2014), <http://www.ccdaily.com/Pages/Campus-Issues/Why-Are-Community-College-Students-Defaulting-at-Such-High-Rates.aspx> (citing economic conditions, cost of living, students not completing their degrees, and family and emotional factors as causes of rising student default rates).

months. *Adams*, 742 F.3d at 733 (affirming dismissal where there is a “complete lack of factual content directed at” the relevant claim). The complaint contains *no* allegation regarding the time spent by ITT employees discussing PEAKS or CUSO loans, the materials given to students regarding these loans, or how much time students had to consider those materials.¹⁴

The complaint also fails to allege that conduct by ITT financial aid staff amounted to “coercion,” or that any students entered into a CUSO or PEAKS loan *because* of the asserted conduct. *Cohen v. Am. Sec. Ins. Co.*, 735 F.3d 601, 609 (7th Cir. 2013).¹⁵ Institutions of higher education of all types encourage students to satisfy their financial obligations—and students often satisfy those obligations by assuming debt.¹⁶ Moreover, although the complaint alleges that students took out private loans to pay Temporary Credit balances, it admits that ITT fully disclosed the terms of Temporary Credit, including how many payments students must make and when they must make them. ¶¶ 66, 102-03. It is not unfair or coercive to hold a contracting party to the terms of an agreement. *Cohen*, 735 F.3d at 609 (“insisting that a contract partner fulfill his contractual duties or face the agreed-upon consequences—is not coercion”).

Any allegation that ITT caused students to enter into private loans by misrepresenting the *value* of its educational programs similarly must fail. First, misrepresentation is an element of a deceptive practices claim, and the complaint does not include a cause of action for deceptive practices. 12 U.S.C. § 5536(a)(1)(B); *see also FTC v. Cantkier*, 767 F. Supp. 2d 147, 153 (D.D.C. 2011); *FTC v. IFC Credit Corp.*, 543 F. Supp. 2d 925, 935 n.3 (N. D. Ill. 2008).

Second, the complaint does not allege facts sufficient to show that any supposed representation

¹⁴ Several of the “mystery shopper” reports directly contradict the notion that the initial financial aid process was “rushed.” *See, e.g.*, Ex. D-E (mystery shopper reports quoted in paragraphs 59, 77 and 83, discussing the scheduling of “follow-up” financial aid appointments and students taking time to consider studying at ITT).

¹⁵ For example, if a student chose to take a third-party private loan regardless of ITT’s statements at the repackaging stage, ITT could not have proximately caused any subsequent injury arising from *that loan*. *Siegel v. Shell Oil Co.*, 612 F.3d 932, 934-35 (7th Cir. 2010).

¹⁶ *In re Chambers*, 348 F.3d 650, 657-58 (7th Cir. 2003); *see also, e.g., Kelley v. Univ. of Richmond*, 2006 WL 1555933, at *1, *3 (E.D. Va. June 2, 2006), *aff’d*, 211 F. App’x 173 (4th Cir. 2006).

was likely to mislead reasonable consumers. *FTC v. World Travel Vacation Brokers, Inc.*, 861 F.2d 1020, 1029 (7th Cir. 1988). By the Bureau's lights, if an entity misrepresents its product to a consumer who then purchases that product using credit—without relying on the misrepresentation—then the entity has caused substantial harm within the Bureau's enforcement authority. Given the many other statutory and common law prohibitions on commercial misrepresentation, that could not have been Congress's intent. Third, representations regarding academic program quality are in any event beyond the Bureau's expertise and are regulated directly by the Department of Education and others. *E.g.*, 34 C.F.R. §§ 668.71-75.

3. The Complaint Fails To Allege That Any Injuries Were Not “Reasonably Avoidable.”

The complaint does not adequately plead that any alleged injury was not reasonably avoidable. Whether an injury is reasonably avoidable depends on the degree to which “consumers had a free and informed choice,” or “have reason to anticipate the impending harm and the means to avoid it.” *Davis v. HSBC Bank Nev., N.A.*, 691 F.3d 1152, 1168 (9th Cir. 2012) (internal quotations and citations omitted). An injury also is avoidable where a consumer is “aware of, and [is] reasonably capable of pursuing, potential avenues toward mitigating the injury after the fact.” *Id.* at 1168-69.

The complaint's conclusory assertion of unavailability hinges on students' debt at the time they took out private loans. ¶ 163. As the complaint acknowledges, the reason students entered into private loans is because they owed money to ITT, either to satisfy due and owing Temporary Credit balances or to pay for the next phase of their education, because they generally lacked other financial financing options, and because ITT—like all businesses—sought payment for services rendered. ¶ 8.

First, the complaint does not allege that students were prohibited from satisfying

obligations from other sources. Indeed, it notes that many students satisfied their obligations using, for example, veterans benefits, and others did not take third-party loans at all. ¶¶ 25, 143.

Second, the complaint fails to show that students had no choice but to enter into a CUSO or PEAKS loan because their credits were only transferable under limited circumstances.

¶ 160b. Limited transferability is not non-transferability, and the complaint fails to allege that students could not protect their interests and avoid private loans by attending ITT part-time, working between academic terms, or transferring to another institution. Moreover, all relevant information about the transferability of ITT credits was fully disclosed. *See* ITT, Transferability of Credits Disclosure, <http://www.itt-tech.edu/credits.pdf>.

Third, the complaint states that ITT fully disclosed the terms of Temporary Credit, including how many payments students must make and when they must make them (¶¶ 66, 102-03), so that students certainly would “have reason to anticipate” they would have to repay. *Davis*, 691 F.3d at 1168 (quotation marks omitted). The complaint does not allege that any students agreed to assume Temporary Credit because they somehow reasonably believed that *Temporary Credit* would not have to be repaid. *Cf.* ¶¶ 104-08. “Long-standing principles of contract and sound public policy impose a duty on contracting parties to understand the obligations they are assuming, and if they do not, they cannot be heard to later complain about a lack of understanding.” *IFC Credit*, 543 F. Supp. 2d at 946. Moreover, the Enrollment Agreements that ITT students signed (¶ 66) expressly incorporated ITT’s course catalog, which set forth the third-party lenders’ terms for PEAKS and CUSO loans, including interest rates. Ex. A at 2; Ex. C at 44-46, 48-49.¹⁷

¹⁷ The complaint does not plead that students were prevented from reading and understanding the Cost Summaries or course catalogs at the repackaging stage. *IFC Credit*, 543 F. Supp. 2d at 946 (“[T]here is no ‘I didn’t read it’ defense, unless there was some obstacle” to review of the materials) (citing *Dugan v. R.J. Corman R.R. Co.*, 344 F.3d 662, 667 (7th Cir. 2003)).

4. The Complaint Fails To Allege That Any Harm Was Not Outweighed By Benefits To Consumers.

The complaint also fails to plead that harm to students “was not outweighed by countervailing benefits” to consumers. ¶ 164; *see also Iqbal*, 556 U.S. at 678.

It is a mistaken notion that a CUSO or PEAKS loan is without significant benefit to students or, at the very least, would cause more harm than good. The complaint never asserts that any student was in a worse position after obtaining an ITT degree *and* entering into a CUSO or PEAKS loan than they would have been without both—even if a private loan *were* their only finance option. Earning potential does not only refer to employment obtainable immediately upon attainment of a degree. Many graduates from various types of post-secondary educational institutions advance in their careers following the “entry-level” positions obtained upon graduation. In any event, absent private loans, students with Temporary Credit balances or otherwise in need of funds to cover an additional year of tuition would almost certainly have been worse off. ITT would have been within its rights to deny such students continued access to its programs. *In re Chambers*, 348 F.3d 650, 658 (7th Cir. 2003) (“When students fail to pay tuition bills on time, institutions can withhold educational services until payment . . .”).

B. The Complaint Fails To Allege Adequately That ITT Engaged In Any Abusive Acts Or Practices.

The Bureau’s novel theories of “abusiveness” must be rejected.

1. Counts 2 and 3: The Complaint Fails To Allege That ITT Took “Unreasonable Advantage” Of Students.

Counts 2 and 3 fail as a matter of law because the Bureau has not adequately alleged that ITT took unreasonable advantage of consumers—an essential element of the Bureau’s novel theory that ITT engaged in “abusive” acts or practices. 12 U.S.C. § 5531(d)(2); ¶¶ 167, 173, 175, 182. The complaint asserts only legal conclusions that are “not entitled to be assumed

true.” *Iqbal*, 556 U.S. at 681.

The complaint asserts that ITT took unreasonable advantage of students’ inability to locate financing sources other than third-party private loans by “[t]aking control” of the financial aid process, using “aggressive” tactics and “pushing” students into “expensive, high-risk” loans for the purpose of “window-dressing ITT’s financial statements and increasing its stock price.” ¶ 172. These are clear examples of conclusory statements that must be ignored in judging the sufficiency of a complaint. *Iqbal*, 556 U.S. at 681. Moreover, these conclusory assertions are unsupported by any facts, and thus give no indication of the specific conduct that the Bureau is challenging. Count 2, for example, alleges that ITT took unreasonable advantage of consumers “selecting or using the ITT Private Loans” only during a five-month period (¶¶ 170-71)—but there is no hint that any fact alleged pertains either to the repackaging process or that five-month period. *Adams*, 742 F.3d 720 at 733.

Similarly, the complaint gives no indication as to what is meant here by ““advantage.”” ¶¶ 167, 175 (quoting 12 U.S.C. § 5531(d)(2)(B) & (C)). There is no allegation that ITT received any fees or interest from any private loan. To the contrary, the complaint alleges that ITT “guarantee[d]” the very same private loans for which it supposedly predicted a 60% default rate (¶¶ 11-12)—which undermines the Bureau’s unlikely claim of “advantage.” *Bissessur v. Ind. Univ. Bd. of Trs.*, 581 F.3d 599, 603-04 (7th Cir. 2009) (complaint lacking facially plausible claims must be dismissed).¹⁸

Stripped of its conclusory and irrelevant allegations, the complaint alleges only that ITT offered certain students Temporary Credit that was payable at the end of the academic year (¶ 6), that continuing students had the option of repackaging outstanding balances by taking third-party

¹⁸ The conclusory allegations that the third-party loans were “window-dressing [for] ITT’s financial statements and increasing its stock price” (¶¶ 172, 181), are supported by no facts concerning ITT’s stock price or financial statements during the relevant period—matters outside the Bureau’s jurisdiction in any event.

private loans to supplement any federal aid they received (¶¶ 5, 8), and that ITT expected students to secure funding from some source (including family, friends, or savings, for example) to pay outstanding balances before continuing with their classes (¶ 8). No authority holds that this course of conduct is taking “unreasonable advantage” of consumers; rather, this is how financial aid in higher education works. There is no factual allegation that ITT failed to inform any student of his or her obligation to repay Temporary Credit, or the consequences of failing to pay outstanding tuition balances when due. *Jackson v. Bank of Am. Corp.*, 711 F.3d 788, 793 (7th Cir. 2013) (challenge to home foreclosure was properly dismissed where no facts showed that plaintiffs did not understand the terms of their loan or the consequences of defaulting).¹⁹

If the Bureau’s theory is that the third-party loans were “abusive” because students taking such loans allegedly defaulted at a “high” rate (¶ 12), that, too, fails to state a claim. The Bureau fails to plead that the student default rate was *caused* by ITT—a necessary element of any theory of liability. *Lexmark Int’l, Inc. v. Static Control Components, Inc.*, 134 S. Ct. 1377, 1390 (2014) (injuries must be proximately caused by defendant’s violation of statute). More plausible causes are the actions of third-party lenders, general economic conditions, socioeconomic factors, and even student choice. *In re Roberson*, 999 F.2d 1132, 1136 (7th Cir. 1993); *see also* Hackett, *supra*. ITT cannot be punished for conditions it did not cause, and the complaint fails to cross “the line from a ‘possible’ to a plausible claim of entitlement to relief.” *Yefich v. Navistar, Inc.*, 722 F.3d 911, 917 (7th Cir. 2013); *see also* Section III.A.2, *supra*.

2. Count 2: The Complaint Fails To Allege Students’ Inability To Protect Their Interests.

Count 2 must also be dismissed because it fails to allege that students were unable to

¹⁹ The complaint alleges that ITT threatened “expulsion” for students who failed to pay their outstanding tuition balances. ¶ 172b. Even assuming *arguendo* that allegation were true, there is nothing that prohibits a university from refusing to educate a student who fails to pay tuition. *Chambers*, 348 F.3d at 658.

protect their own interests in deciding whether or not to enter into a private loan. An act or practice is not abusive if it does not take unreasonable advantage of “the inability of the consumer to protect the interests of the consumer in selecting or using a consumer financial product or service.” 12 U.S.C. § 5531(d)(2)(B); ¶ 167. Count 2 is limited to a five-month window and alleges abusive conduct only in the repackaging process, not during the initial financial aid process. ¶¶ 170, 173. As noted above, the complaint does not specify that *any* of its allegations pertain to the repackaging process during the relevant period. Thus, the complaint fails to state a facially plausible claim. *Adams*, 742 F.3d 728.

The complaint posits that students were unable to protect their own interests in the repackaging process “because” they lacked the resources or time to repay any outstanding Temporary Credit or obtain private loans elsewhere. ¶ 171. But these allegations, too, are conclusory: The complaint does not show that ITT limited the amount of time students had to arrange financing from any source, prevented students from paying with family funds, or prevented students from taking a period to work and then resuming their education when they had paid their Temporary Credit balance—or, indeed, did anything to cause the injury.

Even if the complaint is read to allege “coercion” in requiring students to pay their debts before transferring, count 2 would still fail to state a claim because educational institutions may—and do—withhold credits for transferring students with outstanding tuition balances. *In re Oliver*, 499 B.R. 617, 620-21 (Bankr. S.D. Ind. 2013); *see also Todd v. Collecto, Inc.*, 731 F.3d 734, 739 (7th Cir. 2013) (It is “[not] unfair for a college to withhold a student’s transcript until she has settled her debt to the school.”). A student’s decision to leave an educational institution before completing a degree may have countless causes unrelated to the transferability of credits or an outstanding tuition balance. *Karam v. Corinthian Colls., Inc.*, 2012 WL 8499135, at *8,

*11 (C.D. Cal. Aug. 20, 2012) (“students may withdraw for any number of reasons,” including “decisions to pursue other career or educational opportunities, family and personal circumstances, or financial factors”). The complaint thus fails to allege “more than a sheer possibility” of actionable conduct. *Iqbal*, 556 U.S. at 678; *accord Yefstich*, 722 F.3d at 917.²⁰

Indeed, the allegation that students could not protect their own interests because no other financing options were available to them, and that ITT took advantage of this fact by providing a financing option, is nonsensical. If private loans were students’ only option, then ITT *helped* students—which obviously was ITT’s intent. Without those loans, students would not have been able to continue their educations. With those loans, students had the *choice* of not continuing their educations or taking a private loan.

Under the Bureau’s boundless theory of abusive conduct, any business that offers an interest-bearing loan to consumers who lack other financing options takes “advantage” of their “inability” to protect themselves. It is no answer to characterize third-party private loans as “expensive” and “high-risk.” ¶ 172c-d. The CFPB precludes the Bureau from regulating interest rates, 12 U.S.C. § 5517(o), and loans to consumers who lack other financing options are high-risk by definition, since it is the risk of default that limits their options. The Bureau’s legal theories thus would create a class of prospective students who are too dangerous to serve—and therefore cannot be educated. Such a construction of the CFPB is contrary to the best interests of disadvantaged students, lacks any discernible limits, and should be rejected.

3. Count 3: The Complaint Fails To Allege That ITT Took “Unreasonable Advantage” Of Students’ “Reasonable Reliance” On ITT To Act In Their Interests.

Count 3 also must be dismissed because it is internally inconsistent and fails to plead

²⁰ The complaint implausibly suggests that because of limits on the transferability of ITT academic credits, “most students were forced” to take private loans or leave ITT. ¶ 171. Again, students were not “forced,” and ITT disclosed all pertinent information about the transferability of its credits at all times. *See* Part III.A.3, *supra*.

adequately that ITT took “unreasonable advantage” of its students’ “reasonable reliance” on ITT staff “to act in the interests of the consumer.” 12 U.S.C. § 5531(d)(2)(C).

a. Internally Inconsistent. As with counts 1 and 2, count 3 is limited to a five-month window in late 2011 and is premised on ITT’s supposed “brokering” of third-party private loans. ¶¶ 177-78. Unlike counts 1 and 2, however, count 3 can be read—barely—to cover actions at both the initial financial aid stage *and* in the repackaging process. ¶ 179 (alleging students’ reliance “when they signed up for their financial aid packages, including the [third-party private loans]”). This attempt to cobble together enough conduct to make out a claim for abusiveness only highlights count 3’s fatal flaws.

To be “abusive,” the alleged “unreasonable advantage” and the alleged “reasonable reliance” must be experienced by the same “consumer,” 12 U.S.C. § 5531(d)(2)(C)—defined as “an individual,” *id.* § 5481(4)—within the period of the alleged violation. If the complaint is asserting that individual students entering the initial *financial aid* stage between July 21, 2011 and December 2011 reasonably relied on ITT staff, then ITT cannot have taken unreasonable advantage of that reliance in making CUSO and PEAKS loans available to those students within that five-month period because those students would not have been eligible for such loans until 2012, when any Temporary Credit became due (¶ 6), and those third-party loans were not offered in 2012 in any event. Thus, count 3 fails to state a claim insofar as it depends on supposed actions “when [students] signed up for their financial aid packages.” ¶ 179.

If, on the other hand, the complaint is asserting that students entering the *repackaging* process in the five-month period reasonably relied on ITT staff “when they signed up for . . . the [private loans]” (¶ 179), then count 3 fails to state a claim because the Bureau asserts that students supposedly had “no choice” but to sign up for private loans. ¶ 119. If students were

“forced” to take private loans, as the Bureau contends, then they could not have relied on ITT’s representations at the repackaging stage as a matter of law. “Reliance naturally implies some choice between two or more possible decisions,” whereas coercion “implies that the person who is coerced has no choice.” *Cemar, Inc. v. Nissan Motor Corp.*, 713 F. Supp. 725, 733-34 (D. Del. 1989). The Bureau’s theory that continuing students in the repackaging process had no choice but to enter into private loans necessarily means that those students took private loans for reasons *other* than representations purportedly made by ITT in the repackaging process—thus fatally undermining the notion that students were acting in reliance on ITT’s representations. *See, e.g., Schorsch v. Reliance Standard Life Ins. Co.*, 693 F.3d 734, 741 (7th Cir. 2012) (no reasonable reliance where party would not have acted differently); *Van Gunten v. Cent. States, Se. & Sw. Areas Pension Fund*, 672 F.2d 586, 589 (6th Cir. 1982) (per curiam) (similar).

b. Failure To Show Reliance. Count 3 fails for the additional reason that it alleges no factual content concerning ITT’s representations and assurances. The complaint offers only bare conclusions that students were not given “sufficient information” and ITT employees did “all the work” for students, simply telling them where to sign (¶¶ 65, 92)—but no facts in the complaint support such conclusions. Paragraphs 65 and 92 (like most other allegations in the complaint) relate to the initial financial aid process, whereas the Bureau principally seeks to hold ITT liable for allegedly taking advantage of students *later*, at the repackaging stage. ¶ 181b-d. The paragraphs that purport to relate to the repackaging process are “[t]hreadbare recitals of the elements of a cause of action” devoid of factual content—a telling failure. *Iqbal*, 556 U.S. at 678; ¶¶ 85-87, 138-42. Indeed, the complaint fails to allege that students were not given full information regarding Temporary Credit or private loans, or that ITT gave students false information about relevant terms. To the contrary, the Bureau admits that all students signed an

Enrollment Agreement, which incorporated the third-party lenders' terms and interest rates for PEAKS and CUSO loans. Ex. C at 44-46, 48-49. The complaint also fails to allege any facts regarding students' decisions to enter into private loans. Thus, the complaint fails to set forth "allegations plausibly suggesting (not merely consistent with)" students' reasonable reliance on ITT's statements. *Twombly*, 550 U.S. at 557.

The complaint asserts that "[s]ome ITT students" relied on financial aid staff (¶ 141), but fails to show that *any* student actually relied on representations by ITT staff at any stage of the financial aid process.

Grasping at straws, the complaint asserts that ITT induced reliance by telling students that an ITT education would "help students better their lives." ¶ 180a. But telling students that an education will better their lives is not actionable; the President repeatedly has said the same thing.²¹ That statement is also not a representation that private loans are appropriate financial tools for any particular student—and the complaint never draws that necessary connection. Similarly, employees representing that they are "experts" in financial aid (¶ 180b)—even assuming that occurred—is no reason for students to rely on those employees for *personal* finance counseling. Such a representation says nothing about whether ITT employees have insight into a student's particular financial interests.²²

The complaint's assertion that ITT trained its employees to "solicit[]" students' reliance (¶ 180d) is unsupported. Allegations that ITT assisted students in the financial aid process or used "automated" software (¶¶ 90-91) do not support an inference that ITT trained its staff to

²¹ See, e.g., White House, Higher Education Webpage ("Earning a post-secondary degree or credential is no longer just a pathway to opportunity for a talented few; rather, it is a prerequisite for the growing jobs of the new economy."), <http://www.whitehouse.gov/issues/education/higher-education>.

²² That students "did not know" how the financial aid staff was paid (¶ 180c) is irrelevant to whether ITT induced students' reliance. In any event, financial aid employee compensation is heavily regulated by the Department of Education, and there is no allegation that ITT's compensation policies were not fully compliant.

induce student reliance. In any event, these allegations do not relate to conduct of ITT staff at the repackaging stage, and, once again, could be brought against any university in the country.

c. Student Interests. Count 3 also rests on the assumption that ITT did not “act in the interests of” its students. 12 U.S.C. § 5531(d)(2)(C). But there is no reason why assisting students with CUSO or PEAKS loans means that ITT was not acting in students’ interests. There is simply no incompatibility between the normal activities of financial aid staff and students’ overlapping interests in obtaining financing to pursue their degrees. To hold otherwise would be to foreclose many beneficial transactions that are in the parties’ *mutual* interests. Moreover, nothing in the CFPA requires that covered persons must act *solely* in the interests of the consumer; if it did, the statute would effectively prohibit loan counseling by any for-profit entity. Nor does the statute limit the relevant inquiry to consumers’ *financial* interest, as the complaint apparently assumes. Rather, the statute refers to consumers’ “interests” (plural), acknowledging that consumers have a wide range of interests—financial, educational, professional—that may be implicated in any given context.

IV. THE CLAIM THAT ITT VIOLATED REGULATION Z IS SUBSTANTIALLY TIME-BARRED AND ENTIRELY MERITLESS

TILA and Regulation Z require creditors to disclose any “finance charge,” defined to include all charges imposed by the creditor as an incident to the extension of credit. 15 U.S.C. § 1605(a); 12 C.F.R. § 1026.17(a). For count 4, the Bureau asserts that a discount ITT offered to graduating students who paid their Temporary Credit balances in a lump-sum at the time of graduation constituted an undisclosed “finance charge” to students who declined the discount because it was an offer made “for the purpose of inducing payment by a means other than the use of credit.” 12 C.F.R. § 1026.4(b)(9); ¶¶ 147, 188-89. The Bureau is wrong.

A. As an initial matter, Regulation Z's statute of limitations bars the Bureau from pursuing remedies against ITT for alleged violations occurring prior to February 26, 2013. Any civil action alleging violations of TILA and Regulation Z must be brought "within one year from the date of the occurrence of the violation." 15 U.S.C. § 1640(e); *Moor v. Travelers Ins. Co.*, 784 F.2d 632, 633 n.1 (5th Cir. 1986); *Basham v. Fin. Am. Corp.*, 583 F.2d 918, 927 (7th Cir. 1978). The clock begins to run from the date the transaction is consummated between a consumer and a lender. *Moor*, 784 F.2d at 633. Thus, only claims arising after February 26, 2013, one year before the date on which the complaint was filed, can be heard. And the complaint says *nothing* specific about ITT's conduct after February 26, 2013.

B. The Bureau does not adequately state a claim for a violation of Regulation Z. TILA and Regulation Z require creditors to disclose any "finance charge," defined as "the sum of all charges, payable directly or indirectly" by the borrower, "and imposed directly or indirectly by the creditor *as an incident to the extension of credit.*" 15 U.S.C. § 1605(a) (emphasis added); *see also* 12 C.F.R. § 226.4. There is no allegation here of a discount, much less a finance charge, "incident to the extension of credit." Rather, the repayment of Temporary Credit in installments was nothing more than an arrangement to settle credit that ITT had *previously* extended. Although the Bureau asserts that allowing payment of Temporary Credit balances in installments was an additional extension of credit (¶ 149), that characterization is foreclosed by the Bureau's admission that, at the time ITT offered students the payment installment plan, students' Temporary Credit balances were due and payable. ¶¶ 6, 99, 103, 188. The zero-interest installment plans that ITT offered to students who opted not to pay their Temporary Credit balance when due were a standard settlement of existing debt that is expressly *excluded* from Regulation Z. 12 C.F.R. § 226.20(a)(4); *see also Diamond v. One W. Bank*, 2010 WL 1742536,

at *5 (D. Ariz. Apr. 29, 2010). Disclosures required in debt settlements are governed by the Fair Debt Collection Practices Act, which excludes disclosure requirements for creditors settling their own debts. 15 U.S.C. § 1692a(6)(A). Thus, count 4 fails as a matter of law.²³

CONCLUSION

The complaint should be dismissed with prejudice.

Dated: April 28, 2014

Respectfully submitted,

ICE MILLER, LLP

By: /s/ Philip A. Whistler
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*Attorneys for Defendant
ITT Educational Services, Inc.*

²³ ITT's discount offer does not resemble situations where discounts on a good or service for cash customers operate as finance charges for credit customers. 12 C.F.R. § 1026.4(a). A discount operates as a finance charge where a business charges two prices for its goods or services, a higher price to customers who choose to pay over time and a lower price to customers who pay upfront. *E.g., Taylor v. Bob O'Connor Ford, Inc.*, 1998 WL 177689 (N.D. Ill. Apr. 13, 1998); *see also Virachack v. Univ. Ford*, 410 F.3d 579, 582 (9th Cir. 2005); *Odier v. Hoffman Sch. of Martial Arts, Inc.*, 619 F. Supp. 2d 571 (N.D. Ind. 2008). ITT's offer did not create an incentive for students to pay for their educational services before receiving them rather than over time after receipt, the circumstance addressed by 12 C.F.R. § 1026.4(b)(9).

CERTIFICATE OF SERVICE

I hereby certify that on April 28, 2014, a copy of the foregoing Brief In Support Of Defendant's Motion To Dismiss, including the accompanying exhibits, was filed electronically. Service of this filing will be made on all ECF-registered counsel by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Philip A. Whistler

Philip A. Whistler

March 28, 2014

Anthony S. Bieda
Vice President for External Affairs
Accrediting Council for Independent Colleges and Schools
750 First Street, NE, Suite 980
Washington, DC 20002-4223

Re: ITT Technical Institute – CFPB Adverse Action
Case No. 1:14-cv-292, U.S. District Court Southern District of Indiana

Dear Mr. Bieda:

The ITT Technical Institutes have an established record of compliance with the *Accreditation Criteria*, including Section 2-2-152.

On Thursday, February 27, 2014, our institution notified ACICS of the lawsuit filed against ITT Educational Services, Inc. (the owner and operator of the ITT Technical Institutes) by the Consumer Financial Protection Bureau on February 26, 2014. The CFPB claimed that the company engaged in predatory lending by pushing its students into high-cost private loans likely to default, and misled students about their job prospects following graduation.

As previously communicated, the ITT Technical Institutes believe that this complaint is without merit and we intend to vigorously contest the CFPB's theories in court. At this time, we are preparing a response to be filed with the Southern District of Indiana, and anticipate that the filing will occur within the next 60 days.

We will continue to keep ACICS apprised of any material developments. If you require any additional information relating to the reported non-substantive change to the campus operations of the ITT Technical Institutes in the interim, please let me know.

Sincerely,

(b)(6)

Shawn J. Crawford
Vice President, Compliance and Regulatory Affairs



March 13, 2014

ID Code 00015354

VIA E-MAIL ONLY

Mr. Kevin M. Modany
Chairman and Chief Executive Officer
ITT Educational Services, Inc.
13000 North Meridian Street,
Carmel, IN 46032-1404

Dear Mr. Modany:

The Council has been informed that the Consumer Federal Protection Bureau (CFPB) has filed a lawsuit against ITT Educational Services Inc., Case No. 1:14-cv-292 U.S. District Court Southern District of Indiana, for predatory student lending, alleging ITT “exploited students and pushed them into high-cost private student loans that were very likely to end in default.”

In addition “CFPB alleges ITT misled students about their prospects for getting jobs after completing their programs.” The Council is required to review any adverse information regarding an institution once such information becomes known.

Please provide this office with a written response to this information, including copies of appropriate materials to support your statements. The Council will expect your response on or before **March 21, 2014**.

Your immediate attention to this matter is appreciated. If you have any questions, please contact me at (202) 336-6781 or abieda@acics.org.

Sincerely,

Anthony S. Bieda
Vice President for External Affairs



March 13, 2014

ID Code 00016046

VIA E-MAIL ONLY

Mr Michael Wayne Alcorn
Director
ITT Technical Institute
9500 Ormsby Station Road, Suite 100
Louisville, KY 40223

Dear Mr. Alcorn:

This letter is a request for updated information regarding the lawsuit against ITT Technical Institute filed by Mr. Rodford Seabolt et al. in the Jefferson County Court, KY.

Please respond by **March 21, 2014**. Until this matter is resolved, please continue to provide information to the Council as it becomes available.

If you have any questions, please contact me at (202) 336-6781 or abieda@acics.org.

Sincerely,

(b)(6)

Anthony S. Bieda
Vice President for External Affairs



March 7, 2014

ID Code 00023908

VIA E-MAIL ONLY

Mr. Eugene McWhorter
Director
ITT Technical Institute
10220 North 25th Avenue, Suite 100
Phoenix, AZ 85021

Dear Mr. McWhorter:

This letter is a request for updated information regarding the concerns of the Arizona Board of Nursing. Please provide the Council with an update which includes: your current status with the Board of Nursing; copies of any further correspondence received from the Board as well as copies of any responses to said correspondence.

Please respond by **March 21, 2014**. Until this matter is resolved, please continue to provide information to the Council as it becomes available.

If you have any questions, please contact me at (202) 336-6781 or abieda@acics.org.

Sincerely,

(b)(6)

Anthony S. Bieda
Vice President of External Affairs

CC: Shari Campfield, ITT Tech, Carmel, Indiana



March 7, 2014

Sheri Campfield
Regulatory Affairs Manager
ITT Educational Services, Inc.

Dear Ms. Campfield:

The Council appreciates the on-going effort by ITT Tech to provide timely information regarding the Breckenridge School of Nursing in Henderson, NV and its approval status with the Nevada State Board of Nursing. We have reviewed the information provided by ITT regarding the revocation of the license to operate the nursing program, including the updates for November and December 2013.

Please provide information for Council review:

1. Updates to the SBON for January and February 2014.

The information is due to Council by March 21, 2014. Until this matter is resolved, please continue to provide information to the Council as it becomes available.

Regards,

(b)(6)

Anthony S. Bieda
Vice President of External Affairs
202.336.6781

Attorney General King, feds, sue ITT nursing programs

By [Mike Bush / Journal Staff Writer](#)

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ALBUQUERQUE, N.M. — Gary King and three other state attorneys general on Wednesday joined the federal government in filing lawsuits against ITT Educational Services that accuse the for-profit college chain of predatory lending practices in its nursing programs and numerous other violations of U.S. and state law.

King was in the nation's capital for a meeting of the National Association of Attorneys General when the suits were announced. In addition to a state suit filed in Bernalillo County, a federal suit was filed in Indianapolis — ITT is headquartered in Carmel, Ind. — by the Consumer Financial Protection Bureau, an agency of the U.S. government. Illinois, Iowa and Kentucky also filed suits against ITT.

King cited “numerous violations of New Mexico’s Unfair Practices Act and Post-Secondary Educational Institutional Act” as the basis for the state’s involvement in the sweeping legal action.

He joined CFPB director Richard Cordray in making the announcement and said New Mexico was working jointly with the federal government and the other states in moving against ITT. The suits claim that ITT, a private company, pressured and corralled students into high-cost loans that it knew were likely to default. According to the suits, ITT’s aim was simply to increase profits.

The suits seek restitution for students who were victimized, civil fines, and injunctive and declaratory relief to end ITT’s practices.

Calls to ITT headquarters Wednesday were not returned. Its nursing programs are available in 22 states, including New Mexico. It has provided post-secondary educational programs here since 1989.

“A significant percentage of the New Mexico students that entered the ITT nursing program were unable to complete the program,” King said. The students “cannot get a job in their chosen field because their ITT credits will not transfer; they must start over at another institution.”

Meanwhile, he added, they “continue to suffer under their heavy student loan debt.”

“ITT marketed itself as improving consumers’ lives,” Corday said, “but it was really just improving its bottom line. We believe ITT used high-pressure tactics to push many consumers into expensive loans destined to default. Today’s action should serve as a warning to the for-profit college industry that we will be vigilant about protecting students against predatory lending tactics.”

King’s complaints about ITT practices in New Mexico mirror many of the claims in the federal lawsuit. Specifically, King said:

- ITT’s Breckinridge School of Nursing in New Mexico has never been accredited, but false marketing led the public to believe it was.
- The company “misled its nursing students to believe that the credits earned in the ITT program would transfer to other higher educational institutions.”
- ITT was less than truthful when it claimed its associate nursing degree could be used as a basis

for a bachelor's degree in nursing or other advanced degrees at other educational institutions.

- The company misrepresented “the true cost of the program, the flexibility of the program and student loans, and the amount and types of debt incurred by these students.”

- ITT misrepresented to students that its nursing program was flexible and compatible with maintaining full-time employment when, in fact, class schedules were fixed and the curriculum was rigid and unsuited to maintaining full time employment;”

- ITT charged the nursing students for “tools” that were unusable, outdated or unnecessary.

King also charged that ITT took unfair advantage of the students' lack of knowledge, ability and experience by misleading them about their obligations and rights under the agreement they were required to sign for admission. Moreover, students were inadequately informed about the cost of the loans and the full amount that would have to be repaid.

ITT, King said, “failed to disclose to students that what was originally presented as a ‘no interest’ loan would be ‘rolled over’ into a private, high interest-bearing loan product.”

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

CONSUMER FINANCIAL)
PROTECTION BUREAU,)
)
Plaintiff,)
)
v.)
)
ITT EDUCATIONAL SERVICES, INC.)
)
Defendant.)
_____)

Case No. 1:14-cv-292

COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES

The Consumer Financial Protection Bureau (the “Bureau”) alleges the following, upon information and belief, having occurred between 2009 and the present, unless otherwise specified, against ITT Educational Services, Inc. (“ITT” 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), and 5565, based on Defendant’s violations of section 1036(a)(1) of the CFPA, which prohibits unfair, deceptive, and abusive acts and practices, and the Truth in Lending Act, 15 U.S.C. §§ 1601 *et seq.*, and Regulation Z thereunder, 12 C.F.R. Part 1026.

2. ITT, a publicly traded, for-profit corporation, assures consumers who enroll in classes at one of its 149 locations throughout the country, or in its online programs, that it will help them obtain more desirable jobs and higher income to better their lives.

3. This offer comes with a high price tag, however, and the low-income consumers whom ITT targets can rarely afford to pay its high tuition out-of-pocket. Therefore, ITT’s business model relies on convincing these consumers to obtain federal aid, mostly loans, to pay ITT.

4. Federal aid, mostly loans, taken out by consumers comprises the overwhelming majority of ITT's revenue.

5. Federal aid, including federal loans, does not typically provide an ITT student with enough money to cover ITT's entire tuition, however. Few of ITT's students can afford to cover this tuition gap with their own money.

6. To close this tuition gap, when ITT recruited new students, it offered them zero-interest, short-term loans payable in a single payment nominally due nine months later, at the end of that academic year. ITT referred to these loans as "Temporary Credit."

7. Through December 2011, ITT's Temporary Credit operated merely as an entry point to private student loans that ITT students would be pushed into in order to repay their Temporary Credit and pay for any tuition gap in subsequent years of study.

8. Students who were given Temporary Credit received no warning of what ITT ultimately planned to do. If students were not able to pay off the Temporary Credit at the end of the academic year—something ITT knew few students would be able to do—ITT coerced them into paying off their Temporary Credit amounts with high-interest, high-fee private loans payable over ten years. At the same time, to cover the tuition gaps for the upcoming year, students were coerced into taking out additional private student loans. If students were unable to pay off the Temporary Credit and pay the second-year tuition gap, and they refused the private loans, they were threatened with expulsion.

9. The ITT staff of campus financial aid offices (the "Financial Aid staff")—who were compensated based in part on how many students they were able to force into these private loans—engaged in a variety of aggressive tactics, such as pulling students from class or withholding course materials or transcripts, to get those students to sign up for these private loans.

10. While students were left unaware that the zero-interest Temporary Credit was just an entry point for these expensive private loans, ITT did consistently tell its investors, from the time the loan programs were put in place, that it was ITT's "plan all along" that students' Temporary Credit would be paid off through private lending programs. ITT had established the lending programs to ensure that income and free cash flow would improve, which in turn improved the appearance of ITT's financial statements.

11. Indeed, ITT designed these private loan programs—ostensibly run by third parties, but in reality controlled by ITT and backed by an ITT guarantee that protected those third parties from loss—to ensure that students with Temporary Credit balances could repay those balances and finance future tuition gaps no matter what their credit profile; ITT required in the lending criteria for those loan programs that they accept virtually any second-year ITT student who had been given a Temporary Credit by ITT.

12. Default rates for ITT students on all loans have been high, but ITT itself projected, as far back as May 2011, that more than 60% of the students who had received the private loans would default. Simply to enhance its financial statements and appearance to investors, ITT sacrificed its students' futures by saddling them with debt on which it knew they would likely default.

JURISDICTION AND VENUE

13. 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.

14. Venue is proper in this district because Defendant maintains its headquarters and does business in the Southern District of Indiana. 28 U.S.C. § 1391(b); 12 U.S.C. § 5564(f).

PARTIES

Plaintiff

15. 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) and (b).

Defendant

16. ITT is a Delaware corporation headquartered in Carmel, Indiana that is publicly traded on the New York Stock Exchange under the ticker symbol “ESL.” ITT is a for-profit post-secondary educational institution that operates 149 locations in 38 states, in addition to offering online programs.

17. At least from July 21, 2011 through December 2011, ITT engaged in offering or providing “consumer financial products or services” pursuant to the CFPA, 12 U.S.C. §§ 5481(5) and (15)(A)(i), by offering or providing loans, through certain private loan programs, to its students to pay for a portion of ITT’s tuition.

18. At least from July 21, 2011 through December 2011, ITT engaged in offering or providing “consumer financial products or services” pursuant to the CFPA, 12 U.S.C. §§ 5481(5) and (15)(A)(i), by brokering loans to its students by, among other things, serving as, and holding itself out as, an intermediary between lenders offering student loans and ITT’s students, and in arranging the loans for the students. ITT received a benefit in arranging such loans, which were exclusively provided to ITT students.

19. At least from July 21, 2011 through December 2011, ITT engaged in offering or providing “consumer financial products or services” pursuant to the CFPA, 12 U.S.C. §§ 5481(5) and (15)(A)(viii), by providing, or purporting to provide, through its Financial Aid staff, substantial advice and assistance to students enrolling in ITT programs regarding loans or other available

financial aid to cover their ITT tuition, including advising them on what aid programs they could use to pay for ITT, completing much of the necessary applications and paperwork on behalf of students for such loans and aid, and ensuring that such applications and paperwork were completed so that students would obtain the financial aid to pay ITT's tuition.

20. At least from July 21, 2011 through December 2011, ITT provided a material service to a "covered person," pursuant to the CFPA, 12 U.S.C. § 5481(26), in connection with the offering or provision by such covered person of a "consumer financial product or service" pursuant to the CFPA, by participating in "designing, operating, and maintaining" the private loan programs.

21. Accordingly, at least from July 21, 2011 through December 2011, ITT was a "covered person" and a "service provider" under the CFPA, 12 U.S.C. §§ 5481(6) and (26).

FACTUAL ALLEGATIONS

ITT's Business Model Is Based on Convincing Consumers to Take out Student Loans to Pay Its High Cost

22. ITT is a publicly-held company, and its primary duty is to maximize profit for its shareholders.

23. ITT's revenues come from student tuition and fees. ITT's tuition is higher than most other for-profit post-secondary institutions. Since 2009, ITT's two-year Associate's degree programs—which are the programs in which approximately 85% of ITT students are enrolled—have cost approximately \$44,000, based on a charge of \$493 per credit hour. By the same measure, Bachelor's degree programs have cost approximately \$88,000.

24. ITT students generally have poor credit profiles and low earnings; according to ITT's Chief Financial Officer ("CFO"), the average ITT student is earning around \$18,000 per year and has a credit score under 600 at the time he or she enrolls. Such students can very rarely pay for ITT's tuition out-of-pocket.

25. The primary method by which students pay their ITT tuition, and the main source of ITT's cash receipts, is financial aid provided by the federal government under Title IV of the Higher Education Act of 1965, 20 U.S.C. §§ 1070 *et seq.* ("Title IV Aid"). In its Form 10-K for the year 2012, filed with United States Securities and Exchange Commission ("SEC"), ITT reported that it obtained approximately 80% of its cash receipts from Title IV Aid programs, most of which came from student loans. ITT also disclosed that approximately 16% of its cash receipts came either from federal benefits for servicemembers and veterans or from state aid programs. Therefore, in 2012, about 96% of ITT's cash receipts came from the government.

26. In 2011, about 89% of ITT's cash receipts came from the government, and around 7% came from private loans.

27. The only way ITT can access these funds is by getting consumers in the door to apply for these forms of aid. These students are ITT's sole source of revenue.

28. ITT is aware of the financial struggles of its students. The average ITT student who is single with no dependents earns only a few thousand dollars above the poverty line and has a deeply sub-prime credit profile, and the average student with a family is living below the poverty line.

To Convince Consumers to Take out Loans to Pay ITT's High Tuition, ITT Represented That It Would Work in Their Interest to Place Them in Desirable Jobs With Good Salaries

29. In order to convince consumers to attend and remain at ITT, ITT represented, through a variety of means, that it would work in the interests of its students to better their lives.

30. ITT represented through television and Internet advertising, as well as in oral and written marketing materials, that ITT and the education it provided would help students obtain better jobs. For example, ITT broadcast advertisements on television and on the Internet that stated, "We are educators helping people build a foundation for their lives."

31. ITT made representations regarding the success of its graduates in job placement through a variety of means. These representations were meant to attract and retain students at ITT and to induce them to take out aid, including loans, to pay ITT's tuition.

32. On its website and in written materials provided to students, ITT told its students about its "placement rates" for "positions that required the direct or indirect use of skills taught in their programs of study." In addition, ITT provided this information in its Forms 10-K filed with the SEC for the years 2010 through 2012, representing that ITT placed approximately 70% of its "Employable Graduates" in such positions.

33. These figures were based on selective data and incomplete information and did not represent realistic outcomes for most ITT students. For example, the placement rates do not include former students who did not graduate (which is the most common outcome for students who begin at ITT), may include jobs that do not require the degrees students paid for (such as retail jobs), and may include positions that were merely seasonal. These job placement rates were designed to mislead consumers about the value of an ITT education.

34. ITT recruiters made a practice of representing that ITT would help to 'place' students in order to convince potential students that ITT would help them obtain desirable jobs. ITT maintained only one career counselor per approximately 207 students.

35. As a part of a mystery shopping program conducted for ITT, a mystery shopper reported that although the recruiter would not "guarantee anything about placement," the recruiter "told me after the interview that I was highly place able [sic]."

36. Another mystery shopper wrote, "I asked if there were programs upon graduation for job placement. She said that they do not use the word guarantee, but that placement is highly successful." [Punctuation added.]

37. Despite making representations to students that ITT would help them find a job in their field of study, ITT provided either no help or only minimal assistance in this regard. Numerous students have complained that ITT failed to provide them the career support they expected and that they have been unable to obtain positions utilizing their degrees.

38. In order to convince potential students that attending ITT would better their lives, ITT represented through oral and written marketing materials that attending ITT would increase their future salaries.

39. ITT made a practice of instructing its representatives to show prospective students presentations that purported to reflect substantially improved earnings and job prospects resulting from attending ITT. For example, ITT provided its recruiting staff with a chart to show prospective students entitled “Projected Future Earnings,” which showed that earnings over time would increase into the six figures, even with only an Associate’s degree. The chart said in large letters, “25% Annual Return on Investment.” ITT representatives were instructed to “[r]ecite from memory the following statement and interest check word for word:”

The potential average return on investment for employed graduates is presented in the Value Proposition for Employed Graduates disclosure. Based on the reported salary information of the 2006 employed graduates of the ITT Technical Institutes across the country, the *potential annual return to a 2006 employed graduate over his or her working life from his or her monetary investment in an ITT Tech education is, on average, 25%.* [Emphasis added.]

40. ITT staff made a practice of orally providing prospective students with assurances of large salaries or selective local graduate salary information.

41. One mystery shopper hired by ITT reported that an ITT recruiter told her that graduates of ITT’s Programs Management program “usually make six figures.”

42. Another mystery shopper wrote that a phone representative “quoted the Department Director as saying that some of their IT Security graduates are earning six figures after one year of work.”

43. Another mystery shopper wrote that a Financial Aid Coordinator told her “about salaries at 90 thousand a year.”

44. In addition to the foregoing, ITT representatives also provided vague answers, general numbers, and misleading salary charts, calculated to give a misimpression of what an ITT education would offer.

45. For example, one mystery shopper who asked about the salaries for graduates of the paralegal program reported that, “after the long drawn out application enrollment process, I began to get the impression that this school might be a bit of a scam because I talked to so many different people who all seemed so intent on being my friend while at the same time avoiding my direct questions.” [Punctuation added.]

46. In contrast to claims by ITT representatives about large salaries, in its Form 10-K for the year 2012, ITT claimed that the “reported annualized salaries initially following graduation averaged approximately \$32,061 for the Employable Graduates in 2011.” In its Forms 10-K for the years 2011 and 2010, ITT disclosed average “annualized salaries” for Employable Graduates as approximately \$31,300 and \$31,600, respectively.

47. Even those Form 10-K numbers appear to be exaggerated because they were based on a flawed survey. In addition, the numbers were “annualized,” which suggests that they included jobs that were temporary, rather than permanent, salaried positions.

48. In any event, since most ITT students drop out without obtaining a degree, disclosing salary numbers only for graduates is inherently misleading.

49. Numerous students have complained that ITT promised better salary outcomes than they have been able to achieve.

To Convince Consumers to Take out Loans to Pay ITT's High Tuition, ITT Made Misleading Representations About ITT's Accreditation and Transferability of Credits

50. In convincing students that it would help them better their lives and was worth incurring a significant debt burden, ITT trumpeted its “national accreditation,” which to a consumer not knowledgeable about accreditation sounds better than “regional accreditation.” In fact, regional accreditation is preferable for purposes of allowing credits to easily transfer among schools.

51. Regionally accredited schools, such as community colleges and state universities, will not automatically accept credits from institutions accredited by the Accrediting Council for Independent Colleges and Schools (“ACICS”), a national accreditation organization that accredits many for-profit schools, including ITT. Rather, regionally accredited schools will accept transfer credits from ACICS-accredited institutions only on a case-by-case basis.

52. ITT exploited a lack of understanding by consumers regarding the distinction between types of accreditation and transferability of credits.

53. For example, ITT falsely told prospective nursing students that the nursing programs either were accredited, or would be accredited, by the appropriate bodies to allow them to use their ITT degree to obtain a nursing position. Many students only learned this was untrue after they started at ITT.

54. Mystery shoppers hired by ITT reported that some ITT recruiters lied about accreditation. For example, one mystery shopper wrote that a recruiter falsely “explained that ITT was accredited by ACICS just like all other schools, noting it is the same system for everyone.” [Punctuation added.] Another mystery shopper reported that an ITT “representative said that the accreditation was the same as any traditional college or university.” A third said that a recruiter “said that the ACICS was the same for ITT as well as other Colleges” and “that all colleges had to be accredited by the ACICS.” A fourth said the recruiter “told me that ITT Tech is accredited by the Department of Defense.” These statements are all false.

ITT Used Aggressive and Controlling Tactics to Recruit and Enroll Students, and to Convince Them to Take Out Loans to Pay Its Tuition

55. ITT used high-pressure, strong-arm recruiting tactics to get consumers to enroll in ITT programs and take out student loans to pay for them.

56. ITT instructed its recruiters to make 140 calls a day to consumers if they had no appointments scheduled, or 100 per day if they had an appointment. ITT recruiters at times contacted consumers several times in the same day.

57. ITT provided its recruiters with scripted responses intended to get prospective students to come to campus. For example, ITT instructed its recruiters to counter a consumer's concerns like "Was only looking for info to be mailed," with a series of responses until the recruiter could get the student to "give up" and come in. ITT instructed its recruiters to counter a consumer's concerns about cost with an evasion, such as: "I cannot tell you what your exact cost will be . . . it varies student to student, our Financial Aid Administrators are the experts. You can meet with them when you come in for the tour." ITT instructed its recruiters to counter a consumer's concerns about cost with a response such as, "Do you want a discount education, or a valuable one that will give you a return in the future?"

58. ITT trained its recruiters to entice potential students to visit a campus in person because consumers have a harder time fending off ITT's high-pressure sales tactics when they are present in person.

59. ITT instructed its staff to engage in a long, hard sell, including the use of many videos and presentations designed to wear down prospective students into agreeing to enroll at ITT. One mystery shopper reported, "Too much time was taken on the . . . presentation and not enough on financial aid and making a decision."

60. Another mystery shopper wrote, “I was there for over 3 hours and they still were not through with the presentation and financial aid process.”

61. Part of that long process was an admission test that was virtually impossible to fail and was used to give prospective students the impression that ITT had admissions standards and that the students had achieved something by being admitted to the school. Despite the test, ITT would enroll virtually any student who had access to funding.

62. For example, a mystery shopper that ITT hired wrote that she “made a point to fail the 12 minute exam and she came back and said I passed just fine, which made no sense to me. I think I only answered one or two of the math questions, so I don’t see how that was possible”

[Punctuation added.] Another mystery shopper reported that a recruiter “explained even though the test has 50 questions and your [sic] only allowed 12 minutes to take it, you only need 13 correct.”

[Punctuation added.]

ITT Recruiters and Financial Aid Staff Rushed Students Through the Complex Process of Enrollment and Financial Aid, Forcing Students to Rely on ITT to Act in Their Interests

63. After an aggressive sales pitch about how ITT would help students better their lives, ITT encouraged consumers to rely on ITT’s staff to get them signed up for the school and for financial aid funds. The enrollment and financial aid processes were inexorably linked, efficiently automated, and run by ITT staff so that ITT could be sure students enrolled and obtained funding, bringing in revenues.

64. In contrast to the lengthy sales pitch, the enrollment and financial aid processes were much faster, so that many consumers did not know or did not understand what they signed up for.

65. Recruiters induced prospective students to sign forms without giving them sufficient information about what they were signing.

66. ITT required potential students to sign an Enrollment Agreement before they could receive information about their financial aid options or meet with Financial Aid Staff. This tactic was aimed

at getting the students to commit to enrollment before they were in a position to make an informed decision about how they would pay for their program, further encouraging students to rely on ITT Financial Aid staff to help them with the process.

67. Mystery shoppers hired by ITT reported being rushed through e-signing documents such as credit check approvals and authorizations to request transcripts, among other documents, without understanding what they were agreeing to. One mystery shopper said of these tactics, “they try to trap you into enrollment by going through these steps so soon.”

68. Another wrote that the ITT representative “wanted me to start classes tonight. I told her I could not . . . I told her I needed to know how my financial aid turned out before I committed, so she said if I came to classes and then finances did not work out I would not have to pay for anything. . . . I never owe anything until I graduate.” [Punctuation added.]

69. The financial aid process is complicated and difficult to understand. Rather than helping students better understand the borrowing process and make informed decisions in their best financial interests, 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.

70. A mystery shopper reported that the financial aid coordinator:

had me complete some forms explaining briefly what the forms were as I signed off of them. *She began the financial application without really explaining to me fully what I was about to sign.* I told her that I was not ready to give my SSN for the credit check. It was at this point she told me that I may not be able to take the test If I did not provide my SSN and that she wanted to get me enrolled and set up for classes today. [Emphasis and punctuation added.]

71. Another mystery shopper wrote, “For example, had I not been aware that a soft check of my credit was being performed ahead of time, as indicated in the material for this shop, I would not have known that such is taking place. *The option to allow or disallow a credit check was never explained or provided.*” [Emphasis and punctuation added.]

72. Another mystery shopper reported that an ITT representative “forged” her paperwork and further noted:

I saw briefly on the computer screen and asked her to wait because I wanted to see what it said. I said again, ‘let me see.’ She reluctantly slid the mouse to me. I asked her why it said I unknowingly signed forms electronically because I stated multiple times that I had not decided She said she was trying to help and it was the only way she could give me the test to help push me through. I found the page she skipped over and it stated that I electronically signed High School GED certification, Transcript Authorization, School Catalog Handbook, Graduation Information Agreement I told her I feel like they are being deceptive . . . my electronic signature was fraudulently placed . . . I am absolutely astonished how they are attempting to cheat, lie, and fraudulently mislead individuals. [Punctuation added.]

73. As part of their sales tactics, ITT recruiters pressured prospective students to schedule follow-up appointments to complete their financial aid applications either before they had even made the decision to enroll, or quickly after enrollment so they would be less likely to change their minds.

74. A mystery shopper wrote that an ITT recruiter indicated that her application “could not move on in the computer system unless we filled in an appointment date for the Financial Aid.” When the mystery shopper objected, saying he wanted to check his calendar, the recruiter “told me that I HAD to pick a date . . . so I picked a date to meet with him.”

75. Another mystery shopper wrote, the Financial Aid representative “insisted on scheduling an appointment with me, telling me that she was required to enter something on her calendar, even if I had to change or cancel it. I told her I could not commit to anything but she insisted anyway.” [Punctuation added.]

76. Another mystery shopper wrote, “I was strongly pressured to attend a meeting on Saturday for a grants seminar, and an appointment was made to finish my enrolling and financial aid paperwork, despite my declining. I was told to make it and then I could cancel it later.” [Punctuation added.]

77. Another mystery shopper wrote that the Financial Aid Coordinator “said she would call me Saturday to set up a meeting, and I said that would not be good because I was moving but she seemed insistent to do so. *This seemed a bit invasive and suffocating for me* since I said I would be in contact with them.” [Emphasis and punctuation added.]

78. ITT Financial Aid staff, like the recruiters, made a practice of rushing new students through the financial aid process, leaving many unsure what they were signing and further encouraging reliance by the students on what the Financial Aid staff was doing on their behalf.

79. One mystery shopper reported that, during the financial aid process, the Financial Aid Coordinator only explained some of the documents and even signed two of them for the shopper, who reported, “The whole meeting went so fast (the [Financial Aid Coordinator] talked very quickly) that it was hard to understand what was going on.”

80. Another mystery shopper wrote, “It was a challenge to keep up with [the Financial Aid Coordinator’s] pace, as she was very quick explaining things, and very fast on the computer. There were a few times where I just stopped her and asked her to please explain what she had just said.”

81. Another mystery shopper reported that the Financial Aid Coordinator discouraged her from reading the material on the screen, “telling me it was not necessary to read all the way through. The same for areas needing my signature. She summarized the paragraphs and told me to put my initials and that I could read over it later.” [Punctuation added.]

82. Another mystery shopper wrote, “I did not like how quickly [the Financial Aid Coordinator] had me e-sign papers on the screen. *Honestly, I really did not want to sign anything, but she was controlling the mouse and, as soon as I said everything on the screen was correct, she clicked that I signed it* and moved onto the next one. That was off putting.” [Emphasis and punctuation added.]

83. Another mystery shopper reported that it was “a bit overwhelming with how quickly we went through everything, and I wasn’t exactly clear on everything [the Financial Aid Coordinator] was having me sign up for.” [Punctuation added.]

84. Another mystery shopper wrote that, “the Financial Aid aspect of the interview . . . was conducted quite rapidly and very little information was provided as to what my personal information was being used for.”

ITT Also Pressured and Rushed Continuing Students Through Their Financial Aid Appointments, Requiring Them to Rely on ITT to Work in Their Interests

85. The financial aid appointments for continuing students, called “repackaging” or “repack” appointments, were similarly rushed and controlled by the Financial Aid staff.

86. This required continuing students to keep relying on Financial Aid staff to act in their interests.

87. In order to ensure that continuing students (including graduating students) came to the Financial Aid staff and signed up for additional financial aid, ITT instructed and incentivized the Financial Aid staff to use certain tactics (the “repackaging tactics”) such as emailing students, calling them 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 professors), and withholding course materials, diplomas, and transcripts. A former Vice President of Finance indicated that withholding materials was “leverage” that ITT used to pressure the students to meet with Financial Aid staff for repackaging.

ITT Made a Practice of Encouraging Students to Rely on Financial Aid Staff to Work in Students’ Interests

88. ITT instructed its Financial Aid staff to gain students’ trust and appear to work in students’ interests.

89. ITT Financial Aid staff, through their words and actions, encouraged students to rely on them, including in putting together financial aid applications on the students' behalf. Indeed, Financial Aid staff assisted students in filling out their Free Application for Federal Student Aid, commonly called the "FAFSA" form, and required students to provide tax returns.

90. A former Vice President of Finance at ITT testified that Financial Aid staff were "essentially holding [the students'] hands" through the financial aid process, including federal aid and private loans.

91. Part of the way that Financial Aid staff did this 'hand holding' was through the automated process for financial aid set up by ITT. 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.

92. Most ITT students obtained their financial aid this way, being encouraged by ITT Financial Aid staff to rely on the staff to do all the work for the students and simply tell them where to sign.

93. One mystery shopper reported that a Financial Aid Coordinator "stated I would get more free money that I don't have to pay back if I let them take care of my paperwork." [Punctuation added.]

94. Another mystery shopper wrote that a representative "said that they want what was best for me and said that they do not pressure students and they are not on commission."

95. Despite words and actions to the contrary, ITT staff was not trained, nor was the staff instructed, to safeguard students' financial interests.

96. Most of ITT's metrics for evaluating the performance of Financial Aid staff were related to how many students had completed financial aid packages, and to the amount of accounts receivable owed to the campus, much of which was related to outstanding Temporary Credit.

ITT Coerced Students to Take out Private Student Loans, for ITT's own Financial Gain, Through a Private Student Loan Financing Scheme Involving "Temporary Credit"

97. Using the tactics described above and others, ITT Financial Aid staff coerced students into taking out loans that they did not want, did not understand, or did not even realize they were getting. ITT Financial Aid staff coerced students into taking out private student loans to cover the tuition gap between what federal loans and grants would cover and the high cost of attending ITT.

98. Through December 2011, ITT sought to have its students pay for the tuition gap with ostensible third-party loans because outside sources of payment could be booked as income to the company, improving its free cash flow and the appearance of its financial statements, and because outside sources of revenue helped ITT meet a requirement by the Department of Education that at least 10% of its revenue be derived from sources outside Title IV loans and grants.

The Temporary Credit

99. Prior to February 2008, ITT relied on a large third-party lender to provide private loans to its students to cover their tuition gap. In or about 2008, after the third-party funding source dried up, to cover tuition beyond what would be covered by Title IV Aid, ITT began offering its students loans that it called Temporary Credit. 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, the end of the academic year for which it was offered.

100. ITT had minimal credit criteria that students had to meet to be eligible for Temporary Credit. Even if a student did not meet these minimal criteria, staff at ITT headquarters could—and, when asked, often did—grant exceptions.

101. Before ITT provided Temporary Credit to students, it performed credit checks to determine if they met the limited credit criteria. Thus, at the time ITT provided Temporary Credit to students, it knew their credit scores.

102. Each student who enrolled at ITT and received Temporary Credit was given a “Cost Summary Payment Addendum” (“CSPA”), to be signed along with the Enrollment Agreement.

103. The CSPA gave limited disclosures about Temporary Credit, disclosing little except that the credit was nominally due in 9 months, the length of the academic year, and carried no interest charge.

104. Some students who had a Temporary Credit loan obligation did not even know they had received Temporary Credit or did not know that it was a loan that would have to be repaid.

105. ITT also led some students to believe that Temporary Credit would be available to cover their tuition gaps for their entire educational program, and that it would only be due to be repaid after the students graduated from ITT.

106. Although the CSPA does not provide any information about having to repay Temporary Credit with other private loans, it does refer to “New Temporary Credit” and “Renewal of Carryforward Temporary Credit,” which could lead consumers to believe that each year they would be provided with Temporary Credit to cover the tuition gap.

107. An ITT mystery shopper reported that Financial Aid staff told her that any costs above those covered by federal aid “would be covered under a new temporary credit and that I would owe no money out of pocket.” Another reported that the ITT staff told her that any costs beyond those covered by grants and federal loans “would be picked up by ITT.”

108. At least one Director of Finance at an ITT campus directed her staff to use the word “funding” to describe Temporary Credit, in order to hide the fact that it was a loan and would have to be repaid.

109. ITT knew that the vast majority of students who received Temporary Credit did not, and would not, have the resources to make the entire lump sum payment within nine months.

110. ITT did not intend to continue offering Temporary Credit to students throughout their entire ITT education. As provided more fully below, in or about 2008, ITT actively solicited, created, and guaranteed ostensibly-third-party lending programs to repay Temporary Credit. In 2009, those programs began offering private loans, and Financial Aid staff began coercing students into repaying their Temporary Credit with those loans.

111. In some circumstances, students received Temporary Credit more than once, were required to pay it off only just before graduation, or were not required to pay it off until after graduation.

112. From 2009 through 2011, ITT was lending students approximately \$100 million to \$150 million per year in Temporary Credit.

113. ITT believed most students were unlikely to repay the Temporary Credit loans and deeply discounted them on its balance sheet, calling them “doubtful accounts.” However, after putting the private loan programs described below into place, ITT no longer had to maintain those deep discounts on its balance sheet because it expected students to be forced to repay the Temporary Credit with private loans.

The ITT Private Loan Programs

114. In 2008, ITT began to build two private loan programs from scratch, later to be called Student CU Connect and PEAKS (together, the “ITT Private Loan Programs” or the “ITT Private Loans”). The ITT Private Loan Programs were intended to be the vehicle for students to pay off their Temporary Credit, enabling ITT to convert Temporary Credit into immediate income and cash-on-hand. The private loans also financed students’ second year tuition gap.

115. 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 and to help ITT avoid lending students any further amounts from its own books after their first year.

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

117. These underwriting guidelines were established by ITT.

118. The Temporary Credit Exception meant that the true credit decisions for ITT Private Loan Programs were made by ITT at the point when it provided Temporary Credit to its students.

119. ITT students did not know this, nor were they made aware that ITT would coerce them into using the ITT Private Loans to repay Temporary Credit, until the point that Financial Aid staff gave them no choice other than to take the ITT Private Loans or be expelled from ITT.

The Student CU Connect Loan Program

120. The Student CU Connect private loan program ("SCUC") originated approximately \$189 million in student loans to ITT students from March 2009 until December 2011, and in particular, approximately \$60 million from July 21, 2011 through December 2011. SCUC was available only to ITT students.

121. SCUC was the brainchild of ITT or its paid consultants, and ITT was actively involved in the creation and support of SCUC by developing the underwriting criteria, providing a credit facility, and paying the credit union membership fees in the lead credit union on behalf of the students who took out SCUC loans. ITT was also actively involved in the servicing and collection activities of SCUC. In addition, ITT provided a stop-loss guarantee to the program participants: if defaults exceeded 35%, ITT would make the credit unions whole for any further defaults.

122. ITT served as the sole intermediary between SCUC and ITT students in introducing the students to the loans. ITT Financial Aid staff did most of the work in completing the paperwork for

the SCUC loans, and students were encouraged to rely on the Financial Aid staff for this assistance. The SCUC loans were disbursed directly to ITT; proceeds were required to be used only to pay ITT and could not be used by students for any other purposes.

123. The interest rate for the SCUC loan, 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.

124. The prime rate, since 2009, has been 3.25%; thus the effective interest rate for SCUC loans has been 13.75% for some borrowers with credit scores under 600; for borrowers taking out loans after April 2011 with credit scores under 600, the SCUC interest rate has been 16.25%. Approximately 46% of the SCUC borrowers had credit scores under 600, and thus were subject to interest rates of 13.75% or 16.25% and origination fees of 10%.

125. Since 2009, federal Stafford loans available under Title IV offered interest rates for all borrowers that were 3.4% for subsidized loans and 6.8% for unsubsidized loans. Such loans did not have origination fees.

126. Approximately \$149 million, or 79%, of the entire SCUC program went to students who had Temporary Credit and who were pushed into SCUC loans to pay it off and to finance their tuition gaps for later years at ITT.

127. As early as May 2011, ITT's consultant for loan default analysis projected a gross default rate of 61.3% for the existing SCUC loans.

128. As private student loans, SCUC loans are difficult to discharge in bankruptcy, requiring the debtor to make a special showing of "undue hardship."

The PEAKS Loan Program

129. On or around September 24, 2009, ITT solicited other loan originators to provide a private loan program, ultimately called PEAKS, which had terms similar to SCUC.

130. The result of that initial solicitation was a complicated structure comprising a trust created in December 2009, finalized in January 2010, and funded by selling student loan asset-backed securities to institutional investors. The originating bank made the loans and then sold them to the trust. ITT served as a guarantor to the trust and the investors, but it maintained the program as an off-balance sheet vehicle.

131. PEAKS, although structured differently, served the same purpose as SCUC. It offered similar rates and now uses the same servicer as the SCUC program. Its borrowers had credit profiles similar to those of SCUC. As it did for the SCUC loans, ITT developed the PEAKS lending criteria, introduced students to the program, and served as the sole intermediary between students and the originating bank. ITT was also actively involved in the servicing and collection activities of PEAKS. As with the SCUC loans, PEAKS loans were exclusively available to ITT students and were disbursed directly to ITT; proceeds were required to be used only to pay ITT and could not be used by students for any other purposes.

132. PEAKS ran out of origination funds in 2011, and it appears that it made no loans after July 21, 2011.

The Plan Behind the ITT Private Loan Programs

133. While failing to disclose to students that the ITT Private Loans were intended from the start to be vehicles to pay off its students' Temporary Credit, ITT did share this fact with investors.

134. From 2009 through 2011, ITT's CEO and CFO participated in quarterly earnings calls with analysts and investors. In these calls, the ITT executives repeatedly discussed the ITT Private Loan Programs as vehicles for taking Temporary Credit off of ITT's balance sheet.

135. In the January 21, 2010 earnings call for Fourth Quarter 2009, ITT talked about the PEAKS program, which had just begun. In response to a question from analysts, ITT's CFO said: "the way the program works is, that it is eligible for second year students. So therefore, those students who have had some internal borrowings in year one, would have effectively refinanced through the PEAKS program in year two." The CEO reinforced this point:

We still anticipate offering internal financing to first-year students Second year students then would be eligible for financing through the PEAKS program, to have financing for their forward-looking studies, as well as refinancing any institutional funding provided to them during the first year. . . . But it works that way, second-year students are in the PEAKS program, and first year will continue to be on the balance sheet.

136. Later in that same call, the CFO clarified further:

Basically the way the program is set up, if you think about the balance sheet aspects of this, obviously positive cash flow elements there. And some of that will come from AR [accounts receivable, including Temporary Credit] that is going to be converted into the PEAKS program, *which was our plan all along*. [Emphasis added.]

137. This "plan all along" applied to both ITT Private Loan programs, which served the same purpose for ITT. Even as ITT discussed the expiration of the PEAKS program in a July 21, 2011 earnings call, ITT's CEO reminded investors that "we actually have other third party lending programs, typically I think referred to as the credit union programs," that is, SCUC. The CEO went on to say that SCUC was "substantially similar for us relative to the PEAKS program so that it's structurally similar and the economics are very, very similar."

"Repackaging" Students into ITT Private Loans

138. ITT instructed its Financial Aid staff to identify students to repackage into the ITT Private Loans as soon as the students had obtained sufficient academic credits to qualify.

139. Financial Aid staff used all of the "repackaging tactics" described above to get students to repackage.

140. Some students objected to the ITT Private Loans, but they were told 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 so far.

141. Some ITT students accepted the ITT Private Loans because they believed ITT Financial Aid staff was acting in their interests in signing them up for such loans, and they believed, based on ITT's representations, that ITT in general was acting in their interests to better their lives.

142. Some ITT students did not even realize they took out the ITT Private Loans because of the rushed and automated manner in which ITT Financial Aid staff processed ITT students' paperwork.

ITT Failed to Disclose the Finance Charges Associated with Temporary Credit Installment Plans

143. Some students who obtained Temporary Credit did not get repackaged into the ITT Private Loans, so they had remaining Temporary Credit balances at the time they were due to graduate.

144. On or about March 2009, ITT began offering students who still had outstanding Temporary Credit at graduation a discount of up to 25% on their Temporary Credit balance if they agreed to pay off all or a portion of the balance in a lump sum.

145. Prior to December 2011, if the students who received this offer could not pay off all of their loan balance in a lump sum, Financial Aid staff was instructed to push the students into a SCUC or PEAKS loan.

146. If the students could not or would not pay either a lump sum or through an ITT Private Loan, ITT offered those students an installment plan of monthly payments ranging, depending on the total amount owed, from 6 months to 6½ years ("Temporary Credit Installment Plan").

147. After December 2011, ITT continued to offer students a discount of up to 25% for paying their Temporary Credit balances in a lump sum upon graduation. ITT offered Temporary Credit

Installment Plans to students who could not, or would not, pay those entire balances in a lump sum. It appears this practice continues.

148. For those students in a Temporary Credit Installment Plan, the foregone discount they would have received had they paid off their Temporary Credit balances in a lump sum constitutes a finance charge.

149. Thus, through the Temporary Credit Installment Plan, ITT regularly extends or offers to extend credit in the form of loans payable in more than four installments and subject to a finance charge.

150. Upon agreeing to the Temporary Credit Installment Plan, students have been asked to sign an acknowledgment of the debt owed to ITT.

151. That acknowledgment letter contains information regarding “Current Temporary Credit Balance,” “Total Payments Required,” “Monthly Payment,” and “Payment Begin Date,” but it does not contain a disclosure of a finance charge.

ITT Students, Left With Unaffordable Loan Payments, Default in Large Numbers

152. While ITT remains profitable—it reaped approximately \$59 million in net income during 2013—former ITT students, having been coerced by ITT into the ITT Private Loans, face a high likelihood of defaulting.

153. The ITT Private 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.

154. ITT is presently projecting a gross cumulative default rate of 64% for the ITT Private Loans. ITT’s projected gross cumulative default rate for the SCUC pool of loans from 2009, the oldest and most seasoned pool of loans, is higher than 70%.

155. The ITT Private Loans are unlikely to be discharged in bankruptcy without a special showing of “undue hardship.”

COUNTS

COUNT ONE

ITT UNFAIRLY SUBJECTED CONSUMERS TO UNDUE INFLUENCE OR COERCED THEM INTO TAKING OUT PRIVATE STUDENT LOANS IN VIOLATION OF THE CFPA

156. The allegations in paragraphs 1-155 are incorporated here by reference.

157. 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).

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

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

160. From July 21, 2011 through December 2011, ITT subjected consumers to undue influence or coerced them into taking out ITT Private Loans through a variety of unfair acts and practices designed to interfere with the consumers’ ability to make informed, uncoerced choices. These unfair acts and practices included the following, at or around the time the students signed the ITT Private Loan contracts:

- a. ITT used the Financial Aid staff’s control of the financial aid process, which was rushed and automated according to ITT policies and practices, along with high-pressure repackaging tactics, including pulling students from class, barring students

from class, refusing to provide necessary materials for class, emailing and calling students at home, refusing to provide transcripts and diplomas, and threatening students with expulsion, to persuade, entice, and coerce students to sign the ITT Private Loan contracts;

- b. ITT leveraged the students' existing Temporary Credit debt, their limited ability to pay that debt or any tuition gap, the virtual non-transferability of ITT's credits, and students' fear of losing their entire investment under the threat of expulsion, to persuade, entice, and coerce the students to sign the ITT Private Loan contracts; and
- c. ITT exploited the students' expectations, which ITT's representations created, that, upon completion of a given ITT program, students were likely to have job opportunities and sufficient earnings capacity to enable them to repay the ITT Private Loans, to persuade, entice, and coerce the students to sign the ITT Private Loan contracts.

161. From July 21, 2011 through December 2011, ITT engaged in these unfair acts and practices in order to increase its income. ITT benefited from the use of ITT Private Loans to repay Temporary Credit, since those payments improved ITT's financial statements by reducing accounts receivable, assuring payment for doubtful accounts, and increasing cash on hand. ITT also benefited from the use of ITT Private Loans to pay tuition gaps, since those payments improved ITT's financial statements by increasing income and cash on hand.

162. Since July 21, 2011, 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 loans that they could not afford, did not want, did not understand, or did not even know they had. ITT Private Loans were high-fee, high-interest rate, ten-year loans, which have more rigid conditions and fewer options to reduce monthly payments than federal loans offer, and which are not

dischargeable in bankruptcy without a special showing of undue hardship. A majority of ITT students who took out the ITT Private Loans since July 21, 2011 have defaulted on or are expected to default on those loans.

163. Since July 21, 2011, the injury caused by ITT's unfair practices was not reasonably avoidable by consumers because:

- a. Due to ITT's handling of the financial aid process, many students either did not understand the loan obligations or were not even aware they had signed the ITT Private Loan contracts;
- b. ITT credits were typically not transferable to other post-secondary institutions, putting students at risk of losing their credits for coursework they had completed and had incurred substantial debt to pay for, if they did not agree to the ITT Private Loan contract;
- c. The vast majority of ITT students had insufficient income to pay off their Temporary Credit or their tuition gap other than through the ITT Private Loans; and
- d. For students without sufficient income, there was an expectation that completing ITT would allow them to earn enough money to avoid defaulting on the loans they had already incurred.

164. The injury to the ITT students who took out ITT Private Loans was not outweighed by countervailing benefits to consumers or to competition.

165. Therefore, from July 21, 2011 through December 2011, 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).

COUNT TWO

ITT TOOK UNREASONABLE ADVANTAGE OF THE INABILITY OF ITT STUDENTS TO PROTECT THEIR INTERESTS IN SELECTING OR USING THE ITT PRIVATE LOANS IN VIOLATION OF THE CFPA'S PROHIBITION AGAINST ABUSIVE PRACTICES

166. The allegations in paragraphs 1-155 are incorporated here by reference.

167. An “abusive” act or practice includes, *inter alia*, one that “takes unreasonable advantage of . . . the inability of the consumer to protect the interests of the consumer in selecting or using a consumer financial product or service” 12 U.S.C. § 5531(d)(2)(B).

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

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

170. From July 21, 2011 through December 2011, ITT took unreasonable advantage of consumers’ inability to protect their interests in selecting or using the ITT Private Loans.

171. Students were not able to protect their interests in selecting or using ITT Private Loans because few students had the resources, particularly in the time permitted, to repay the Temporary Credit or pay the tuition gap out of pocket, or to obtain private loans elsewhere. Given the virtual non-transferability of ITT credits, most students were forced to either take the ITT Private Loans or forfeit their entire investment.

172. ITT took unreasonable advantage of ITT students’ inability to protect their interests in selecting or using the ITT Private Loans. ITT knew about these vulnerabilities and exploited them by:

- a. Taking control of the complex financial aid process;
- b. Using aggressive repackaging tactics, including the threat of expulsion;

- c. Pushing students into expensive, high-risk loans that ITT knew were likely to default; and
- d. Pushing students into expensive, high-risk loans for the purpose of window-dressing ITT's financial statements and increasing its stock price.

173. Therefore, from July 21, 2011 through December 2011, ITT violated the CFPA by engaging in abusive practices, 12 U.S.C. § 5536(a)(1)(B), as defined in 12 U.S.C. § 5531(d)(2)(B).

COUNT THREE

ITT TOOK UNREASONABLE ADVANTAGE OF ITT STUDENTS' REASONABLE RELIANCE ON ITT TO ACT IN THEIR INTERESTS IN VIOLATION OF THE CFPA'S PROHIBITION AGAINST ABUSIVE PRACTICES

174. The allegations in paragraphs 1-155 are incorporated here by reference.

175. An "abusive" act or practice is defined, *inter alia*, as one that "takes unreasonable advantage of . . . the reasonable reliance by the consumer on a covered person to act in the interests of the consumer." 12 U.S.C. § 5531(d)(2)(C).

176. ITT is a covered person under the CFPA. 12 U.S.C. § 5481(6).

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

178. From July 21, 2011 through December 2011, ITT took unreasonable advantage of consumers' reasonable reliance on ITT to act in their interests.

179. ITT students relied on ITT and its Financial Aid staff to act in their interests when they signed up for their financial aid packages, including the ITT Private Loans.

180. The reliance by the students on ITT to act in their interests was reasonable because:

- a. ITT held itself out as a school that would help students better their lives;

- b. The Financial Aid staff held themselves out as subject matter experts who could advise the students about financial aid;
- c. Students did not know that the Financial Aid staff was paid like a sales staff; and
- d. The Financial Aid staff solicited students' reliance and trust, as they were trained to do.

181. ITT did not act in the students' interests. Instead, it took unreasonable advantage of the students' reasonable reliance to act in their interests by:

- a. Taking control of the complex financial aid process;
- b. Using aggressive repackaging tactics, including the threat of expulsion;
- c. Pushing students into expensive, high-risk loans that ITT knew were likely to default; and
- d. Pushing students into expensive, high-risk loans, for the purpose of window-dressing ITT's financial statements and increasing its stock price.

182. Therefore, from July 21, 2011 through December 2011, ITT violated the CFPA by engaging in abusive practices, 12 U.S.C. § 5536(a)(1)(B), as defined in 12 U.S.C. § 5531(d)(2)(C).

COUNT FOUR

ITT'S FAILURE TO DISCLOSE FINANCE CHARGES VIOLATED TILA

183. The allegations in paragraphs 1-155 are incorporated here by reference.

184. The Truth in Lending Act, 15 U.S.C. §§ 1601 *et seq.* ("TILA"), and Regulation Z, 12 C.F.R. Part 1026, require certain disclosures to be made clearly and conspicuously in writing, in a form that the consumer may keep, in connection with the extension of consumer credit. 12 C.F.R. § 1026.17(a).

185. The "finance charge" is one item that must be disclosed by a creditor in a closed-end transaction pursuant to TILA and Regulation Z, 12 C.F.R. § 1026.18(d).

186. Under Regulation Z, a “finance charge” includes any discounts offered as an incentive to pay by a means other than credit. 12 C.F.R. § 1026.4(b)(9).

187. ITT is a creditor within the meaning of the TILA and Regulation Z, 12 C.F.R. § 1026.2(a)(17), because it regularly extends closed-end consumer credit that is both subject to a finance charge and payable by written agreement to ITT in more than four installments, that is, Temporary Credit Installment Plans.

188. From approximately March 2009 through the present, ITT has typically offered a discount plan to students at graduation with outstanding Temporary Credit balances. They are offered a discount on their Temporary Credit balance if they pay in a lump sum rather than through the Temporary Credit Installment Plans.

189. To the extent that such discounts are not applied to the Temporary Credit Installment Plans, ITT is charging students a finance charge in connection with those extensions of credit. 12 C.F.R. § 1026.4(b)(9).

190. From approximately March 2009 through the present, ITT has not disclosed that finance charge clearly and conspicuously in writing in the documents provided to students in connection with Temporary Credit Installment Plans.

191. Therefore, from approximately March 2009 through the present, ITT has violated TILA and Regulation Z. 15 U.S.C. §§ 1631(b) and 1638, 12 C.F.R. §§ 1026.17 and 1026.18.

DEMAND FOR RELIEF

The Bureau requests that the Court award:

1. Equitable relief against ITT;
2. Restitution to affected consumers against ITT;
3. Injunctive relief against ITT;
4. Disgorgement against ITT;

5. Rescission against ITT;
6. Civil Money Penalties against ITT;
7. Plaintiff's costs against ITT; and
8. Additional relief as the Court may determine to be just and proper.

Respectfully submitted,

Anthony Alexis (DC Bar #384545)
Acting Enforcement Director

Ori Lev (DC Bar #452565)
Deputy Enforcement Director

Laurel Loomis Rimon (CA Bar #166148)
Assistant Litigation Deputy

s/ Cynthia Gooen Lesser
Cynthia Gooen Lesser (NY Bar #2578045)
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Attorneys for Consumer Financial Protection Bureau



November 14, 2013

ID Code 00023908

VIA E-MAIL ONLY
Mr. Eugene McWhorter
Director
ITT Technical Institute
10220 North 25th Avenue, Suite 100
Phoenix, AZ 85021

Dear Mr. McWhorter:

This letter is a request for updated information regarding the concerns of the Arizona Board of Nursing. Please provide the Council with an update which includes: your current status with the Board of Nursing; copies of any further correspondence received from the Board as well as copies of any responses to said correspondence.

Please respond by **November 21, 2013**. Until this matter is resolved, please continue to provide information to the Council as it becomes available.

If you have any questions, please contact me at (202) 336-6781 or abieda@acics.org.

Sincerely,

(b)(6)

Anthony S. Bieda
Vice President of External Affairs



October 23, 2013

ID Code 00023908

VIA E-MAIL ONLY

Mr. Eugene McWhorter
Director
ITT Technical Institute
10220 North 25th Avenue, Suite 100
Phoenix, AZ 85021

Dear Mr. Whorter:

This letter is a request for updated information regarding the concerns of the Arizona Board of Nursing. Please provide the Council with an update which includes: your current status with the Board of Nursing; copies of any further correspondence received from the Board as well as copies of any responses to said correspondence.

Please respond by **November 8, 2013**. Until this matter is resolved, please continue to provide information to the Council as it becomes available.

If you have any questions, please contact me at (202) 336-6781 or abieda@acics.org.

Sincerely,

(b)(6)

Anthony S. Bieda
Director of External Affairs



October 21, 2013

ID Code 00016046

VIA E-MAIL ONLY

Mr Michael Wayne Alcorn
Director
ITT Technical Institute
9500 Ormsby Station Road, Suite 100
Louisville, KY 40223

Dear Mr. Alcorn:

The Council has been informed that Mr. Rodford Seabolt et Al. have filed a lawsuit against ITT technical Institute, Louisville, KY, in Jefferson County Court, KY. The suit alleges the institution “lied to get them to enroll, and claiming admissions counselors pressured them to take out thousands of dollars in federal student loans to attend ITT without providing the enrollment packets that outline what's required to graduate.” The Council is required to review any adverse information regarding an institution once such information becomes known.

Please provide this office with a written response to this information, including copies of appropriate materials to support your statements. The Council will expect your response on or before **November 8, 2013**.

Your immediate attention to this matter is appreciated. If you have any questions, please contact me at (202) 336-6781 or abieda@acics.org.

Sincerely,

(b)(6)

Anthony S. Bieda
Vice President for External Affairs



October 8, 2013

ID Code # 00016083

VIA E-MAIL ONLY

Mr. Jeffrey Georgeson
ITT Technical Institute
9511 Angola Court
Indianapolis, IN 46268

Dear Mr. Georgeson:

The Council has reviewed your update regarding the public report, “The Down Side of For-Profit Colleges,” that was produced by AXS TV, filed by reporter Dan Rather and aired on June 4 and 5, 2013. Based on this review, there is no evidence that the institution is non-compliant with the standards set forth in the *Accreditation Criteria*. Therefore, unless additional information and documentation is received, this matter is considered closed.

Please keep in mind, however, that this matter has been made a part of the institution’s permanent file. This material and all other information accumulated through the accreditation process will be reviewed by the Council when considering a new grant of accreditation for the institution.

If you have any questions, please contact me at (202) 336-6781 or abieda@acics.org.

Sincerely,

(b)(6)

Anthony S. Bieda
Vice President for External Affairs



September 27, 2013

ID Code 00015023

VIA E-MAIL ONLY

Ms. Carla Lamb
Director of Education
American Commercial College
8206 Vicksburg Avenue
Lubbock, Texas 79424

Dear Ms. Lamb:

The Council has reviewed your update on the current status of the Odessa, San Angelo and Wichita Falls campuses with the Texas Workforce Commission regarding the conditioned Certificates of Approval, and the False Claims lawsuit filed by the U.S. Department of Justice against your institution. Based on this review, there is no evidence that the institution is not in compliance with the standards set forth in the *Accreditation Criteria*. Therefore, unless additional information and documentation is received, this matter is considered closed.

Please keep in mind, however, that this matter has been made a part of the institution's permanent file. This material and all other information accumulated through the accreditation process will be reviewed by the Council when considering a new grant of accreditation for the institution.

If you have any questions, please contact me at (202) 336-6781 or abieda@acics.org.

Sincerely,

Anthony S. Bieda
Vice President for External Affairs

ITT Technical Institute, - Carmel, IN

School Name: ITT Technical Institute

Location: Carmel, IN

Summary of Issues: ACICS became aware of allegations against ITT Troy, MI, by a former student through a televised report aired on AXS TV, June 4, 2013. The allegations and the relevant sections of the Criteria are summarized as follows:

1. Prospective students of ITT Tech are allegedly being denied the chance to speak with a financial aid officer before enrolling. (3-1-431. Institutional Finance Grants etc.)
2. Enrolled students who participate in the PEAK loan program allegedly are not fully informed of their options and obligations, including the rate of interest attached to the debt. (3-1-441d. Student Services Guidance etc.)
3. Vacancies of instructional personnel allegedly are being left unfilled resulting in students being advised to fulfill academic requirements through independent study without regard to an assessment of satisfactory academic progress. (3-1-531. Instructional Tools; and 3-1-532. Instructional Components)
4. A graduate of the Troy, MI criminal justice program (Bachelor's Degree) allegedly was unable to find employment in the field, despite being reported as "placed in field" by ITT in its 2012 CAR submission. (2-1-801. Annual Accountability Reports)

The institution was required to respond to these public allegations through an adverse inquiry.

Current Status: ITT has provided a detailed response to each of the allegations including information about their policies and process for counseling prospective students on financial aid options, the details of the PEAKS loan program and the signed written disclosures derived from the admission of the student in the report. In addition, ITT provided follow-up guidance to the student subsequent to the report regarding employment opportunities in her field. No further media coverage or third-party inquiries have been generated by this program.



August 15, 2013

Kirk Borkowski
Director
ITT Technical Institute
168 North Gibson Road,
Henderson, NV 89014

ID Code 00016092

Dear Mr. Borkowski:

The Council appreciates the effort by ITT Tech to provide timely information regarding the Breckenridge School of Nursing in Henderson, NV and its approval status with the Nevada State Board of Nursing. We have reviewed the notice by the SBON regarding the revocation of the license to operate the nursing program, and ITT Tech's written intent to appeal the revocation at the September meeting of the SBON.

As a follow-up to the previous correspondence, please provide information for Council review:

1. The outcome of the revocation appeal before the Nevada State Board of Nursing.
2. Evidence that ITT Tech has disclosed the status of its nursing program at the Henderson, NV campus to enrolled students, as well as to admissions and recruitment personnel, in keeping with criterion 3-1-412 (a): Institutions must communicate "current and accurate information regarding courses and programs..."

The information is due to ACICS by November 15, 2013. Until this matter is resolved, please continue to provide information to the Council as it becomes available. Failure to respond may result in the institution being directed to show cause why its accreditation should not be suspended, revoked, or otherwise conditioned at the next meeting of the Council.

Regards,

(b)(6)

Anthony S. Bieda
Vice President of External Affairs
202.336.6781

CC: Shari Campfield, ITT Tech, Carmel, Indiana



July 16, 2013

ID Code 00023908

VIA E-MAIL ONLY

Mr. Eugene McWhorter
Director
ITT Technical Institute
10220 North 25th Avenue, Suite 100
Phoenix, AZ 85021

Dear Mr. Whorter:

This letter is a request for updated information regarding the concerns of the Arizona Board of Nursing. Please provide the Council with an update which includes: your current status with the Board of Nursing; copies of any further correspondence received from the Board as well as copies of any responses to said correspondence. Please respond by **July 26, 2013**. Until this matter is resolved, please continue to provide information to the Council as it becomes available.

If you have any questions, please contact me at (202) 336-6781 or abieda@acics.org.

Sincerely,

(b)(6)

Anthony S. Bieda
Vice President of External Affairs



June 25, 2013

ID Code # 00016083

VIA E-MAIL ONLY

Mr. Jeffrey Georgeson
ITT Technical Institute
9511 Angola Court
Indianapolis, IN 46268

Dear Mr. Georgeson:

The Council has been informed by a public report, "The Down Side of For-Profit Colleges," that was produced by AXS TV, filed by reporter Dan Rather and aired on June 4 and 5, 2013 of the following:

- Prospective students of ITT Tech are allegedly being denied the chance to speak with a financial aid officer before enrolling.
- Enrolled students who participate in the PEAK loan program allegedly are not fully informed of their options and obligations, including the rate of interest attached to the debt.
- Vacancies of instructional personnel allegedly are being left unfilled resulting in students being advised to fulfill academic requirements through independent study without regard to an assessment of satisfactory academic progress.
- A graduate of the Troy, MI criminal justice program (Bachelor's Degree) allegedly was unable to find employment in the field, despite being reported as "placed in field" by ITT in its 2012 CAR submission. (See attached Program Data summary, 01-JUL-11 to 30-JUN-12.)

The Council is required to review any adverse information regarding an institution once such information becomes known. Please provide a written response to this information, including copies of appropriate materials to support your statements. The Council will expect your response on or before July 19, 2013. Your immediate attention to this matter is appreciated. If you have any questions, please contact me at 202.336.6781 or at abieda@acics.org.

(b)(6)

Anthony S. Bieda
Vice President of External Affairs

Program Data - ACICS Students From 01-JUL-11 To 30-JUN-12

Ex_Acics_Program (Version 1.8)

Report Generated On October 25, 2012

Effective Date October 24, 2012

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UPPER MIDWEST

Location: Troy

Program : Criminal Justice

Program : 020-BSCJ

Placement - In Field

Student Name	Student ID	Year of Entry	Transfer In/ Out	Gender	Ethnic
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(b)(6)

Activities	Total
Beginning Census	66
New Starts	8
Re-Entries	1
Online Course	26
Graduates	36
Drops	11
Ending Census	25
Transfer to Another ITT	3
Not Working	16
Placement - Continuing Education	4
Placement - In Field	16



March 12, 2013

ID Code 00023908

VIA E-MAIL ONLY

Mr. Eugene McWhorter
Director
ITT Technical Institute
10220 North 25th Avenue, Suite 100
Phoenix, AZ 85021

Dear Mr. Whorter:

This letter is a request for updated information regarding the concerns of the Arizona Board of Nursing. Please provide the Council with an update which includes: your current status with the Board of Nursing; copies of any further correspondence received from the Board as well as copies of any responses to said correspondence. Please respond by **March 22, 2013**. Until this matter is resolved, please continue to provide information to the Council as it becomes available.

If you have any questions, please contact me at (202) 336-6781 or abieda@acics.org.

Sincerely,

(b)(6)

Anthony S. Bieda
Director of External Affairs