

Remarks of Acting Under Secretary James F. Manning
Before Borrower Defense Negotiated Rulemaking Committee
November 14, 2017

Good Morning. Let me start by thanking you for your service on this committee. Participating in an intense and time-consuming process like negotiating rulemaking, particularly on a topic as debated as this one, takes commitment. Thank you for working to ensure the end result is a borrower defense rule that protects students, safeguards the taxpayers' interests and treats institutions fairly.

The Department has had these same goals in mind as it considers pending borrower defense claims and how to administer the program in the short-term until new rules take effect. Like all of you, Secretary DeVos views borrower defense as one of the most important issues facing the Department and she has taken steps to make sure it gets the attention such an important issue merits. While her commitment to getting borrower defense right is part of why you are here today, the Secretary also remains focused on working through pending claims. Unfortunately, she inherited a difficult situation, one where there was an inadequate infrastructure in place to properly adjudicate claims.

I want to share with you briefly the recent history of borrower defense, its current status, and where the Department is headed on administering the program until new rules take effect. As you know, the borrower defense regulations enacted in 2016 have been delayed and so the Department has and will continue to consider claims under the regulatory status quo which assesses a claim under applicable state law and commits to the Secretary's discretion how to fashion relief.

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During their tenure the previous administration had approved and discharged approximately 15,000 borrower defense claims, all from former Corinthian students. The Secretary inherited roughly 65,000 borrower defense claims, of which approximately 16,300 had been approved in the waning days of the previous administration but not yet discharged. Most of these approvals were for former Corinthian students but slightly more than 2,800 were from former American Career Institute students in Massachusetts and 33 for former ITT students in California.

Upon assuming my responsibilities on January 20th, I began an evaluation of the borrower defense program; this review was complicated by a lack of policies, protocols and procedures and a lack of a searchable data base, tracking of claims was managed using 1000 spread sheets. Our first priority became the 16,000 plus claims approved but not yet discharged. These claims were approved in haste just before the inauguration and there was no infrastructure in place to adjudicate claims. Given the budgetary implications to the taxpayer and the impact on thousands of borrowers and institutions, it was necessary to conduct a high-level assessment of the program, including of these already-approved claims. Throughout the winter and early spring, a team consisting of both career and non-career Department leadership evaluated the program and worked to implement controls and procedures for reviewing claims and processes for discharging loans for successful claimants. We examined the program's operational and managerial structure within FSA, its information systems, and the legal and evidentiary bases for approving and denying claims. We also looked at business practices for claims intake, review, adjudication, and discharge.

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Our review uncovered several areas of concern which required building an infrastructure to review claims and making programmatic tweaks, which in-turn contributed to the time it has taken to adjudicate additional claims. In sum, this short-term evaluation was needed to ensure the administration of the program was built on a solid foundation that would, in the long-term, operate efficiently and according to sound business practices and processes.

In respect to the more than 16,000 approved claims, the Secretary couldn't have been clearer when she said: "Promises made to students under the current rule will be promises kept." These claims did merit a close review but once completed the Department began discharging claims in late spring. Most loans were discharged quickly but a few more complex claims have taken longer.

Approximately 2,000 of these claims fell into that complex category. For example, the Department began approving claims from FFELP and Perkins loan borrowers. However, the Department needed to implement business processes and requirements in order to consolidate those loans into Direct Loans for discharge. There were other scenarios where borrowers with approved claims had multiple outstanding loans, only some of which were associated with their borrower defense claim. FSA has had to manually determine which of these loans to discharge. In other instances, some of the loans associated with a claim fully or partially fell outside of the applicable statute of limitations and so FSA had to identify and separate out those loans so borrowers would not get a discharge for loans ineligible for relief. Of these complex claims, all but a few hundred have been discharged or sent to servicers for discharge. Our internal saying

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about the program is “nothing in borrower defense is easy” and these claims certainly were not.

As a side note, the Department has continued to accept borrower defense applications from FFEL and Perkins borrowers under existing statutory authority in the HEA and a part of the 2016 borrower defense rulemaking that was not delayed. Applicants are given a preliminary determination on their claim before consolidation to allow them the option of not consolidating if their claim is denied.

Moving forward, we have approximately 95,000 pending claims of which roughly 65% are from former Corinthian students. While I cannot give you a specific date or number, I can tell you that approval of some of these claims is imminent. While it has taken some time, I am confident that the work done to assess and make adjustments to the program during this short-term hiatus in adjudicating claims will yield long-term improvements and efficiencies beneficial to all.

Even the most strident borrower advocate would recognize that, undoubtedly, some claims are going to be denied. We have been working carefully to ensure any denials come only after a thorough review of the claim for its potential applicability to an existing Department finding and a full consideration of any evidence provided in the application that would entitle the borrower to relief. I can tell you today that the Department will soon begin issuing some denials very soon.

The Department recognizes that many borrowers have waited a long time to hear about the disposition of their claims. For example, we inherited hundreds of claims that had been sat on for over a year and a half, some of which we are now close to

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adjudicating. To mitigate the inconvenience for how long it has taken to adjudicate claims, interest that accrues on loans for denied claims will be forgiven starting one year after the borrower defense application is filed.

The Department is also working to adjudicate pending claims related to other schools and we are making progress on that front. However, I will admit we are not as close as we are with the Corinthian claims. Unfortunately, when we arrived in January, little to no work had been performed on processes for adjudicating these claims. Another challenge, which I understand was raised yesterday, has been the difficulty in assessing how to apply individual state laws to particular claims. Once Corinthian adjudications begin, our work on other claims will gather momentum. I can promise you we are working day and night to get through these claims and I expect a consistent downward trend in the number of pending claims starting soon.

Long-term, I cannot express to you the importance of your efforts here. While we work to adjudicate claims under the existing borrower defense regulations, we look forward to implementing an improved-upon regulation that you begin considering this week.

Thank you again for your commitment to this process. I look forward to following your work.

Thank you and Good Luck