**Remarks of James F. Manning**

Before Borrower Defense Negotiated Rulemaking Committee

January 8, 2018

Welcome and Happy New Year. I hope you had a restful holiday and are ready to dive into the important work of this committee. In November, I addressed you concerning the status of the pending borrower defense claims, the Department’s efforts to reduce the backlog, and general plans for administering borrower defense until a new rule takes effect. Since then, you have undoubtedly heard of the Department’s execution of the plans I then previewed to you. I am sure you have many questions about the Department’s approach and as important stakeholders on this issue I felt it important to provide you with another update.

On December 20, after a careful review taking into account the interests of both borrowers and the taxpayers, the Department announced it was resuming the approval process for borrower defense claims, particularly for those from former Corinthian students. As we noted, the Department has identified approximately 21,500 claims for approval or denial, 12,900 of which are approvals and 8,600 of which are denials. As of today we have notified approximately 657 borrowers of the approval of their claim and approximately 500 borrowers have been notified of their denial.

All of these 500 borrowers informed of their denials had claims pending for less than a year and so the interest deduction process I described to you in November was not applicable.

The Department will continue, on a rolling basis and as quickly as we can, to notify those borrowers who have yet to hear from the Department about the resolution of their claim. The Department will also apply the already-mentioned interest deduction to the denied claims that have been pending for greater than a year. Our hope for claims moving forward is that borrowers will not need to take advantage of that offering because their claim should be dispensed within a year’s time.

The Department will also continue to review the approximately 37,577 Corinthian claims that, to date, it has not adjudicated under the framework recently announced. However, now that that the Department has the right business processes and a solid infrastructure in place, we expect to move through the existing claims steadily as well as any claims submitted by Corinthian borrowers in the future. We have seen an approximate 36% reduction in the number of pending Corinthian claims as a result of our recent actions and that downward trend should continue. I thank the Borrower Defense Unit at FSA for its hard work in continuing to process these claims.

Now I would like to address a few issues specific to the improved borrower defense discharge process:

First, I am happy to announce the Department has largely addressed the weaknesses in the existing borrower defense procedures identified in both the Department’s own internal review as well as the recent report of the Inspector General. While some in the press portrayed the IG report as critical of the current administration’s handling of the program, the truth is it was Secretary DeVos herself who requested the IG review because of her concerns regarding the program she inherited. She was particularly dismayed by the haphazard approach taken by the previous administration, exacerbated by actively encouraging borrowers to flood the Department with claims without a proper infrastructure in place to intake and manage them. I thank the IG for its work and helpful recommendations. I also applaud the work of Department staff, including those at FSA, to correct weaknesses identified in the IG’s report related to improving documentation and the review process, establishing timeframes for claims intake, review, and discharge, and shoring up other areas of the program.

Next, I want to emphasize that the Department has not changed the existing approval criteria for Corinthian borrowers. Claims approved under the previous administration will be claims approved under this one. While some may not agree with facets of our approach, the Department has not instructed staff to review claims with extra scrutiny. I would also like to add that many of the claims now being denied were flagged for denial in the previous administration. As the IG noted in its report, the previous administration had not set up a process to act on the denials. We now have.

Now, I know I’m speaking to an audience that has already educated itself on the approach the Department is taking regarding relief owed to borrowers, so I will proceed assuming you have some knowledge of the basics. I would like to make a few points regarding, what we call the ‘make whole relief’ approach.

First, the Secretary was simply not comfortable with either an ‘all” or “nothing’ approach. So, while the Department does not dispute its own findings regarding Corinthian’s wrongful conduct, it was skeptical of the prior conclusion that assumed all Corinthian students received nothing of value from their education.

Given the Secretary’s discretion to determine relief owed to borrowers, we looked at an alternative approach. The Department engaged in the process you have likely read about which compared aggregate program level earnings data of Corinthian borrowers with their peer groups from passing Gainful Employment programs. I understand questions have arisen that Corinthian programs were not generally part of GE. That is true but the Department obtained aggregate earnings data for cohorts of Corinthian borrowers grouped together in the same way as GE cohorts to ensure an apples-to-apples comparison of earnings data.

Our findings reveal that, graduates from many of Corinthian’s academic programs did in fact receive something of substantial value from their education. Groups of graduates from Corinthian programs in many instances performed even better than those from well-performing GE programs.

Given its responsibility to the taxpayer, the Department simply could not ignore what the data revealed. And, given the fact that borrowers by and large failed to provide any real evidence of harm, it has proceeded based on what evidence it does have in its possession.

Likewise, the Secretary believed a ‘nothing’ approach also seemed unfair, even for those attendees of CCI programs who are earning as much or more than graduates of GE-passing programs. Accordingly, we devised a relief methodology that recognizes that those with valid claims suffered some basic harm by virtue of the misrepresentations. That is why all borrowers with approved claims, even those in groups who earned more than their GE counterparts, will receive at least 10% relief. Moreover, within the broad parameters for our approach for relief, the Department has made additional assumptions in favor of the borrower leading to awarding more relief. Let me provide some examples:

* If a borrower had been enrolled in multiple academic programs, we assessed relief using their program with the lowest earnings so as to provide the borrower the greatest amount of relief.
* The Department calculated both Corinthian and GE earnings four possible ways using mean or median and weighted approaches and went with the result that provided the most relief for the borrowers in the program.
* Within our tiered relief system all borrowers’ relief is rounded up to the nearest 10th percentile point. For example, a Corinthian borrower in a program whose average earnings are 59% of the GE program earnings could be entitled to only 41% relief using a purely 1 to 1 inverse relief methodology but under our approach is entitled to 50% relief.
* And, as I’ve said, borrowers whose earnings exceed those of their GE counterparts will receive 10% relief.

There are other examples where the Department made these types of decisions in favor of the borrower but they begin to get extremely technical and you have a long day ahead of you so I will spare you some of these details.

In sum, the relief approach outlined is fair to both borrowers and taxpayers, and is the product of a data-driven approach that makes the most of a difficult and complex situation.

The Department is also working to assess claims from schools other than Corinthian. We have roughly 46,000 pending claims from non-Corinthian schools and, while we are working diligently to adjudicate those claims, I do not have any more specific information to share with you today.

On behalf of Secretary DeVos, I want to thank you again for your work on this committee. After the slow start last time, I realize there was a lot of thoughtful and fruitful discussion in your first meeting in November and I am confident that will continue over this next week.