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before the
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Chairman Hinojosa, Ranking Member Guthrie, and members of the Subcommittee:

Thank you for inviting me here today to discuss student eligibility requirements related to the Federal student aid programs. I am the Deputy Inspector General for the U.S. Department of Education (Department) Office of Inspector General (OIG) and I am currently the Acting Inspector General. As requested, I will provide information on our work in the area of student eligibility for Federal student aid, focusing on the two issues highlighted in the Government Accountability Office's (GAO) report titled, "Proprietary Schools: Stronger Department of Education Oversight Needed to Help Ensure Only Eligible Students Receive Federal Student Aid." The two issues are Ability-to-Benefit (ATB) examinations and oversight and on-line high school diploma mills. I will also address student eligibility problems associated with distance education, a developing vulnerability where OIG is currently focused on combating fraud and abuse.

Background on the OIG

For over 29 years, the OIG has worked to promote the efficiency, effectiveness, and integrity of the Department's programs and operations. We conduct independent audits, investigations, inspections, and other reviews, and based on our findings, make recommendations to the Department to address systemic weaknesses and initiate administrative actions. We also recommend changes needed in Federal laws. Our staff

of approximately 300 includes auditors, financial analysts, information technology (IT) professionals, criminal investigators, inspectors, management and budget analysts, and attorneys. We have 14 offices located across the U.S., including Puerto Rico.

As the Department's responsibilities have grown substantially over the years, so too has our challenge to identify and combat waste, fraud, and abuse in Federal education programs and operations. In recent years we have increased our efforts in identifying emerging and evolving threats to the integrity of Federal education funds, including IT security and issues involving on-line distance education. We have enhanced our work with the Department and its program participants, providing fraud awareness and prevention information and training that have increased the identification and reporting of fraud to us, which we use to investigate and assist in prosecuting to the fullest extent of the law.

Focus on Student Financial Aid Programs

As members of this Subcommittee know, the Federal student aid programs have long been a major focus of our audit and investigative work, as they have been considered the most susceptible to fraud and abuse. The programs are large, complex, and inherently risky due to their design, reliance on numerous entities, and the nature of the student population. OIG has produced volumes of significant work involving the Federal student aid programs, leading to statutory changes to the *Higher Education Act of 1965*, as amended (HEA), as well as regulatory and Departmental changes.

In OIG's early years in the 1980s, the need to address fraud and abuse in these programs was so severe that the OIG dedicated over 75 percent of its resources to fighting fraud and abuse in the Federal student aid programs. This commitment led to numerous OIG recommendations for improved management and oversight of the programs, administrative actions to terminate program participants, and much-needed legislative and regulatory reforms. The Department implemented many of our recommendations, and many requiring legislative action were adopted in the 1992 reauthorization of the

HEA. Some of these changes involved ATB—controls were established over the ATB program, including a requirement that ATB tests be administered by independent evaluators, and a limit on the number of ATB students at a particular institution.

In 1990, GAO placed the Federal student aid programs on its inaugural high-risk list, opening them to a new level of scrutiny by the media, the general public, and the Congress. OIG continued its heightened efforts to identify waste, fraud, and abuse in the programs throughout the 1990s. We supplemented our traditional audit and investigatory efforts with new forensic audit technologies enabling us to identify additional areas of concern involving student eligibility. We identified hundreds of millions of ineligible awards or loan forgiveness to individuals based on inaccurate or fraudulent data included on the Free Application for Federal Student Aid (FAFSA) and other forms. We made numerous recommendations for improved controls that the Department implemented, including new computer matches in screening for: (1) previous loan defaulters; (2) citizenship; and (3) death and disability loan forgiveness for individuals claiming a total or permanent disability or reported as deceased to ensure they were not earning income from employment. As a result of our work in the 1990s and in anticipation of the 1998 reauthorization of the HEA, OIG submitted a detailed report to Congress with 17 proposals for its consideration in the reauthorization process, a number of which were adopted, including two directly impacting student eligibility: (1) verification of applicants' income match with the Internal Revenue Service (IRS) to ensure that the income reported on the FAFSA was the same as the individual's Federal tax return; and (2) and defining appropriate use of professional judgment by financial aid administrators. Although Congress provided the authority to match applicants' income with the IRS, the needed corresponding statutory change to the IRS Code has not yet been enacted.

Over the last decade, there have been significant changes in the Federal student aid programs: in 1998, the Federal Student Aid office (FSA) was created as the government's first Performance Based Organization to manage and administer the Federal student aid programs; and in 2005, GAO removed the Federal student aid programs from its high-risk list. In addition and in response to our recommendation,

Congress amended the HEA in 2006 to provide that those convicted of fraud in obtaining Federal student aid funds are ineligible to receive additional aid until such funds are repaid.

As a result of the 1992 and 1998 HEA reauthorization statutes, which addressed those student eligibility problems that were so prevalent in the 1980s, OIG has shifted its resources to new high-risk areas, including FSA management and oversight of its programs and program participants, lender practices, and the significant growth of on-line distance education. The potential for fraud in distance education stems from the difficulty in ensuring that students are actually enrolled and engaged in academic activities, and are who they say they are. Schools may never have an in-person relationship with the student, making it more difficult to ensure the correct identity of the aid recipient. The rapid growth of distance education, combined with the virtual paperless electronic delivery of student aid funds, makes this an area vulnerable to fraud.

In 2008, GAO officials contacted us regarding a project they intended to take up involving proprietary schools. We provided the GAO team with information on our long history of examining student eligibility and other issues involving the Federal student aid programs and proprietary schools. We highlighted those areas we believe present the greatest risk, specifically distance education, and provided GAO with information from our data analytics efforts, to which it refers in its report.

I will focus the remainder of my testimony in three areas: (1) our work involving ATB; (2) our work involving on-line high school diplomas; and (3) our work involving distance education. We currently have a number of efforts underway in each of these areas. To protect and maintain the integrity of these efforts, we cannot discuss or provide details of our ongoing work, but we are able to discuss the public or general aspects of it.

Eligibility Issues Involving ATB

As the GAO recognized in its report, we concluded a series of audits in 2002 that examined the Department's monitoring of ATB test publishers, the ATB testing program at the two largest independent test publishers, and the administration of tests at three institutions. We recommended at that time that the Department improve its oversight of test publishers. The Department did improve its oversight; however, as GAO reported, additional improvements are needed, due in part to a turnover in personnel at the Department.

As we noted in 2002, the statutory changes to ATB in 1992 and implemented by Departmental regulations eliminated the largest opportunity for abuse of ATB testing by removing schools from the testing process and requiring independent testing, using tests and scores approved by the Secretary. Since that time, we have continued to investigate ATB violations, which often are an aspect of multifaceted fraud schemes involving other criminal conduct. These investigations have resulted in the successful prosecution of many instances of Federal student aid fraud, including prosecutions of school officials who falsified ATB examinations in order to qualify students for Federal student aid. Currently, we have 15 open ATB-related investigative matters. Our closed ATB investigations have resulted in jail sentences, restitutions, fines, and other significant penalties for wrongdoers. Below are three examples of the work we have conducted related to fraudulent ATB practices; all involved proprietary schools that are now closed:

- In 2006, the former owners of the Moler Beauty College, located in Louisiana, and their associates were sentenced to prison or probation and were ordered to pay $165,000 in restitution for altering individuals' failing ATB test scores to qualify them for financial aid. They also administered ATB examinations without being qualified to do so, and falsely certified that the school complied with the Department's ATB standards.

- In 2004, the owner of the Training Center, located in Michigan, along with six other individuals, including the school's ATB test administrator, were convicted

of fraud. The owner was sentenced to prison, and, in conjunction with a civil settlement, was ordered to pay approximately $1 million in restitution for falsifying or directing the falsification of records, which included ATB exams.

- In 2004, the owner and four officials of the Instituto de Estitica y Belleza Marugie, located in Puerto Rico, agreed to pay $400,000 and were banned for life from holding positions with any company or entity participating in Federal education programs for, among other violations, providing false information in ATB test records to obtain Federal student aid.

Eligibility Issues Involving On-line High School Diplomas

A growing issue impacting student eligibility for Federal student aid is on-line high school diplomas. The HEA and Department regulations do not currently specify that a high school diploma must be State recognized or approved, or issued by an accredited or State approved high school in order for a student to qualify for Federal student aid. Our office, GAO, and the Department have identified efforts to exploit this perceived ambiguity.

In its report, GAO identified cases in which proprietary schools helped students obtain high school diplomas from diploma mills. We are well aware of this problem and have related investigative matters underway:

- In 2007, as a part of an ongoing investigation into allegations we received about a proprietary school that was assisting ineligible students to obtain Federal student aid, we conducted an undercover operation in which a school official directed our undercover agent to purchase an on-line high school diploma to render the undercover agent eligible for the aid. The proprietary school official provided our undercover agent with a copy of the answers to the on-line high school's test. We purchased the diploma and then executed a search warrant at the proprietary

school. During the execution of the search warrant, we found a list of 22 on-line high schools in an office of one of the school officials.

- In 2008, we received another list of on-line high schools from an FSA employee. The FSA employee attended a roundtable discussion at a private career college symposium, and an administrator of a private career college approached the employee and provided a list of 32 on-line high schools that were potentially operating as diploma mills. Using both of these lists, we were able to identify and obtained records from 13 on-line high schools that appeared on both lists. An analysis of the data from these on-line schools identified over 9,500 students who purchased a diploma and had received Federal student aid between January 2005 and June 2008.

We are working with the Department to explore how to use the information on on-line high school diplomas and the individuals who have purchased them in the upcoming awards cycle to prevent the disbursement of Federal student aid to individuals who purchased fraudulent diplomas. In addition, we have encouraged the Department, in its upcoming higher education negotiated rulemaking session, to establish a definition of a high school diploma as a condition for receiving Federal student aid. The Department has informed us that it will discuss on-line high school diplomas at the upcoming session and will develop regulatory changes, if appropriate, to address the issue.

Eligibility of Students for Disbursements in Distance Education

Finally, we would like to bring to your attention an issue in the area of student eligibility that is placing increased demands on our investigative and audit resources and highlights the need for greater oversight and statutory or regulatory change: determining whether students in distance education are “regular students” and actually in attendance for Federal student aid purposes.

In order to receive Federal student aid, an individual must be a "regular student," that is, someone "enrolled for . . . the purpose of obtaining a degree, certificate, or other recognized credential." A student must also certify that the aid will be used solely for education-related expenses. For their part, institutions are obligated to return any Federal student aid received if a student does not begin attendance during the period for which aid was awarded. Institutions must be able to document attendance in at least one class during a payment period.

If a student begins attendance and later drops out or withdraws, institutions must determine what funds must be repaid to the Federal student aid programs or to the student. The HEA and Department regulations require the return of funds in proportion to the uncompleted portion of the payment period. However, once a student attends or completes 60 percent of a payment period, then no refund is required. For institutions that are not required by a State licensing agency or an accrediting agency to take attendance, the regulations permit institutions to keep 50 percent of all student aid funds received if a student withdraws or drops out at any point prior to the 60 percent point. Institutions are allowed to keep 50 percent of the funds even when they have an actual record or knowledge of when a student last attended. That point could be as early as the first day or week of class, yet the rules permit an institution to keep 50 percent of all Federal student aid funds received, including loan funds that students will still be obligated to repay.

This framework provides unique management challenges and opportunities for abuse in programs that are offered through distance or on-line instruction. We have completed two audits at distance education institutions that demonstrate our concerns in this area, and we are presently in the final stages of completing two additional audits examining the same issues. Determining what constitutes a class and class attendance in the on-line environment is a challenge in the absence of defined class times or delivery of instruction by instructors. The on-line environment also creates challenges for determining whether a student has enrolled for purposes of obtaining a credential or is just completing sufficient on-line activity to receive a disbursement of Federal student aid to use for other

purposes. On-line instruction typically consists of posted reading materials and assignments, chat-room and email exchanges, and posting of completed student work. The point at which a student progresses from on-line registration to actual on-line academic engagement or class attendance is often not defined by institutions and is not defined by Federal regulations.

As an illustration of this problem, our 2008 audit of Capella University found that the school did not have adequate controls to determine whether students actually began attendance in on-line classes. As a result, Capella failed to return funds for students who dropped out before their first day of class, and continued to disburse funds for students who did not return for subsequent payment periods.

Capella's documentation did not indicate that students who dropped out had engaged in academic activity. As a result, Capella should have returned all Federal student aid, and should not have calculated a refund using the midpoint of the payment period as the withdrawal date. Capella disagreed and asserted that a student's agreement to a faculty expectation sheet, introduction to the teacher or other students, or general questions about the homework process, and similar activity for which it had documentation, were sufficient to justify retention of 50 percent of the aid disbursed to the students who dropped out. We estimated that Capella failed to return over $500,000 in Federal student aid from 2002 to 2005.

In August of 2009, we completed another audit of another large distance education institution, TUI University, which found that the school did not have adequate policies and procedures for ensuring student eligibility for Federal student aid funds at the time of disbursement and for identifying students who had withdrawn from the institution. We estimated that $923,379 of the $8.6 million in Federal student aid disbursements made to students for the Fall 2007, Winter 2008, and Spring 2008 sessions was either disbursed to ineligible students or not earned by students who withdrew from the institution. TUI did not confirm academic activity prior to disbursing Federal student aid, and had no policies to address circumstances when students ceased attendance without

notifying the institution and no procedures to identify such students in order to perform refund calculations.

These audits highlight the difficulty of determining attendance, and thus student eligibility for funding in an on-line environment. Neither the HEA nor the Department's regulations define what constitutes instruction or attendance in an on-line environment.[1] Without such definition, or adequate controls at the institutions themselves, we believe Federal student aid funds are at significant risk of being disbursed to ineligible students in on-line programs, and that inadequate refunds will be made for students who cease attendance in these programs.

Our investigative work has also confirmed the vulnerability of on-line or distance education to fraud in the area of student eligibility. Since 2005, we have initiated 29 distance education-related investigative efforts, 19 of which were identified in the last 2 years. Our ongoing work has revealed that criminals seek to exploit institutions with minimal requirements to establish eligibility for initial and continued student aid disbursements. Community colleges and other low-cost institutions are the primary target of this type of fraud. A number of these institutions have been aggressively engaged in trying to identify fraud and have been communicating with our office regarding their findings or concerns. Below are two very recent examples of our work in this area:

- This summer, a Federal grand jury in Arizona indicted 65 individuals, 19 of whom have pled guilty, for their roles in a $538,000 student aid fraud scheme at Rio Salado Community College. The ringleader allegedly recruited individuals to act as "straw students" at the school in order to apply for and receive Federal financial aid, completed and submitted admission forms, financial aid applications, and supporting documentation containing forged and false statements, and then assumed the identity of those individuals to access Rio

[1] Neither the HEA nor the Department's regulations define what constitutes instruction or attendance – for the on-line environment, or for traditional classroom instruction.

Salado's on-line classes. This was done to generate records of the individuals' participation in on-line classes, which caused Rio Salado school officials to authorize financial aid payments to those individuals. When the straw students received the financial aid checks, they kicked back a significant portion of the proceeds to the ringleader. Rio Salado Community College referred this matter to us for investigation.

- As of September 30, six individuals have been sentenced and another has pled guilty for their roles in an on-line fraud scheme at Axia College, a two-year on-line college of the University of Phoenix. The scheme's two ringleaders were former employees of ACS, a third party servicer to the school, who recruited individuals to enroll at Axia in order to fraudulently obtain student financial aid. The former employees assisted the individual in completing the enrollment forms and student aid applications, then enrolled the individuals in the classes and posted homework assignments for them in order for it to appear as though the individuals were attending the on-line courses. When the individuals received their student aid checks, they would kick back a portion to the two ringleaders. Axia College referred this matter to us for investigation.

These cases, Mr. Chairman, represent what we believe is a significant challenge facing the higher education community in the area of student eligibility: confirming that an individual enrolled in distance education is actually a regular student seeking to obtain a degree or credential and is actually in attendance. We will continue our proactive work in this area to identify issues impacting the integrity of the programs, and aggressively root out fraud and abuse.

On the issues of concern to the Subcommittee today, we will continue to pursue cases of ATB and high school diploma fraud. Implementation of the recommendations made by GAO, along with the Department's proposed improvement plans, should help better detect ATB abuse in the future. Issues involving on-line high school diplomas, however, are an evolving phenomenon which will continue to be a special focus of our

investigative efforts. Until regulatory changes can be put into effect, the attention this Subcommittee and the full Committee have focused on student eligibility issues should help financial aid administrators across the country in being wary of dubious credentials.

Closing Remarks

In closing, let me reiterate that OIG is committed to promoting accountability, efficiency, and effectiveness in all Federal education operations and programs. We will continue to work with FSA, the Department, and our colleagues at GAO to successfully address areas of risk in the Federal student aid programs, and help reduce waste, fraud, and abuse in these important programs. On behalf of the OIG, I want to thank you for the support Congress has given to this office over the years. We look forward to working with the 111th Congress in furthering our goals and achieving our mission.

This concludes my written statement. I am happy to answer any of your questions.