

Testimony of
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before the
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Chairman Hinojosa, Ranking Member Guthrie and Members of the Committee:

Thank you for the opportunity to testify about the integrity of the Federal student financial aid programs. During the upcoming academic year, the Department of Education will help an estimated 14.2 million students enrolled at 6,200 of our Nation's colleges and universities, community colleges, and trade and technical schools begin and complete programs of study that will prepare them to be an active and important part of America's future. Students with degrees and other formal credentials from our Nation's postsecondary education institutions are more likely to be employed, even during these difficult economic times. So, we were pleased to see additional funds invested in student financial aid, including additional funds provided for Pell Grants and Federal Work-Study in the American Recovery and Reinvestment Act (ARRA), which will result in an estimated \$129 billion in federal aid -- \$31 billion in grants and \$98

billion in loans. According to the College Board's 2008 Trends in Student Aid report, Federal student aid accounted for nearly 60 percent of all student aid provided and it is likely that the Federal share will increase, given the current economic conditions that limit the ability of States and institutions to increase aid.

Federal student aid serves a particularly important role in helping our Nation recover from the economic downturn. Last year, there was an unprecedented 20 percent increase in the number of applications filed for aid. More students than ever qualified for Pell Grants, and more students from all economic backgrounds took out Federal loans. Federal student aid provides a critical safety net. Far too many families have found themselves in increased financial difficulty, and wondering whether they can afford to send their children to college. Far too many of our citizens have, through no fault of their own, found themselves needing to return to school for additional training, either because they had lost a job, or feared losing one. In light of the vital importance of Federal student aid in these uncertain economic times, it is extremely important that we maintain program integrity and ensure that the consumers of these programs are protected.

The issues of program integrity and consumer protection are complex and are not limited, as some have asserted, to for-profit postsecondary education. There are many factors that are more important than whether a college is a non-profit, for-profit or public institution. To protect student consumers, we intend to monitor postsecondary education institutions, paying particular attention to indicators such as: high dropout rates, heavy reliance on federal funds, students with high levels of debt or defaults, the financial distress or difficulty managing the institution's financial affairs, consumer complaints, and rapid growth. If we find violations of our rules, we

will take appropriate limitation, suspension or termination action. For example, in FY08, ED compliance staff conducted 190 in-depth program reviews at institutions that were triggered by our risk-based indicators. Ultimately, these reviews led to five administrative actions, including the loss of Title IV eligibility at an institution of higher education. In addition, through its other monitoring activities, ED compliance staff initiated 30 additional administrative actions resulting in 19 other institutions' loss of eligibility. However, if an institution is compliant with our rules, we will provide additional technical assistance to address problems they face.

I appreciate the opportunity to appear here today, because we have a great deal to report on in terms of the steps we are taking to ensure that Federal student financial aid funds are used appropriately, and that the students they are intended to help are not harmed by the actions of institutions and other participants in the Federal student aid programs. The Secretary, the Under Secretary, the newly appointed Chief Operating Officer for Federal Student Aid (FSA), and I all share the view that it is more important than ever that the Department ensure that the right aid gets to the right students, with the right end result: ensuring that students have the opportunity to gain the skills and knowledge to be successful in the workforce and in their communities.

In recent months, the Department began to take additional steps to ensure accountability from institutions participating in the Federal student aid programs, and to ensure meaningful results for students. We have been focusing our efforts on enhancing our leadership role in protecting students and families, and improved communication and cooperation, both within the Department and with other agencies that fund and monitor postsecondary education institutions.

Over the last several months, we have met with officials from other agencies, including the U.S. Departments of Veterans Affairs and Labor, the Government Accountability Office, the Federal Trade Commission (FTC), the National Association of Attorneys General, the National Association of State Administrators of Private Schools, and the New York State Education Department. Just last week we met with officials at the White House. These efforts were designed to share information about effective program monitoring, including how risk factors are identified and used, and to improve inter- and intra-agency communication on postsecondary education issues. In addition, we have been working with the Department's Office of Inspector General (OIG) to identify the recurring findings and recommendations OIG makes during audits of Federal student aid program participants in order to identify ways in which we can quickly reduce program vulnerabilities.

We have begun to retool our process for reviewing participants in the Federal student aid programs and to assess recently-revised program review guidelines. The Department's FSA office is working to improve the program review process, strengthen State and interagency partnerships, and identify other steps to improve program compliance.

These efforts have resulted in better inter- and intra-agency coordination, use of available technology and information, and staff preparation, including the following examples.

- **Access to, and use of, the FTC database of consumer complaint information:** The Department is now able to input and extract trend information about student-reported problems regarding postsecondary schools. This information will be used to help make decisions about the institutions we should monitor given available resources.

- **Creation of a database to promote student consumer complaint resolution:** The Department has created a database of contact information to allow student consumer complaints to be referred, as appropriate, to State Attorney General offices or State agencies responsible for consumer protection or licensing.
- **Expansion of the joint project to improve targeting of limited monitoring resources:** The Department plans to build on the previous successes of the OIG and FSA in identifying risk factors for use in targeting program review activities. These offices combined the efforts of staff with expertise in auditing, investigation, inspections, program reviews, and system data knowledge to identify areas that were at high risk for fraud. They then used this information to deter this activity and to propose legislative or regulatory changes to reduce further instances of fraud. The initial OIG/FSA Fraud initiative conducted resulted in approximately 65% of the 17 schools identified being found to have committed the frauds or abuses identified by the data queries/fraud/abuse indicators.

Notwithstanding our enhanced monitoring efforts, we have an additional safeguard in protecting against waste, fraud, and abuse in the Federal student aid programs – the students who are the direct beneficiaries of those programs. We need to equip them with the tools they need to make good choices. We have increased our efforts to get more and better, information to consumers. In August, the Department began showing graduation rates, collected as part of the National Center for Education Statistics’ Integrated Postsecondary Education Data System (IPEDS), to aid applicants when they select an institution to receive their ISAR information. We anticipate that this additional consumer disclosure will help students and families assess whether they should

enroll in a particular institution. This information helps to remind students to review their choices carefully, and leads them to sources for more comprehensive information. As a possible next step, we are looking into ways that we might link students and their families to the Department of Labor's useful career information, which would enable students to assess what careers are in demand and what wages they might expect to earn in order to inform their decisions on further education in a selected field.

Over the last several years, the Department has been engaged in rulemaking on a variety of issues arising from changes to the Higher Education Act of 1965 (HEA). These rulemaking efforts have been very important to ensuring that new programs, like Academic Competitiveness Grants, National SMART Grants, and TEACH Grants, have been appropriately and efficiently implemented. These rulemaking efforts have also led to important changes to the Federal student loan programs. While some of these rulemaking efforts have helped improve program integrity indirectly, little has been done to focus rulemaking on that specific topic.

On May 26, 2009, the Department published a Federal Register Notice announcing our intent to establish two negotiated rulemaking committees. One committee will develop proposed regulations governing foreign schools. The second committee will develop proposed regulations to maintain or improve program integrity in the Federal student aid programs. In late June 2009, the Department held three public hearings for interested parties to discuss the agenda for the negotiated rulemaking sessions and sought input about whether we should consider rules to modify certain practices related to program integrity and how and when to implement these modifications. We heard testimony and received written comments from approximately 290

individuals. Transcripts from the hearings and copies of the written comments are available on the Department's website. Comments on program integrity issues during the hearings ranged widely, from "make no change" to recommendations for significant change.

The negotiated rulemaking process is continuing. We have received nominations for individuals to serve on the negotiating committees and we have started the process to select individuals to serve on those committees. We will begin negotiations in early November 2009, and expect to complete negotiations by February 2010.

Based on the feedback received at the public hearings held in Denver, Philadelphia and Little Rock, we have identified a dozen topics for negotiations. Let me talk briefly about several of those topics as they relate directly to program integrity in the Federal student aid programs.

One concern that arose during the public hearings and the public comments was about the level of debt that students were incurring in relation to the education and training being provided. As we looked at the regulatory requirements, several changes seemed to be appropriate for consideration to address the debt that students incur. In this context, we plan to consider regulatory changes in three areas: satisfactory academic progress; the definition of a "credit hour"; and "gainful employment in a recognized occupation".

With regard to satisfactory academic progress (SAP), to be eligible to receive Federal student financial aid, a student must meet standards of satisfactory academic progress toward a degree or certificate offered by that institution. During the public hearings, the Department sought input on

whether, or how, to clarify the definition of SAP. As a result of those hearings, during the negotiations we will discuss whether the current regulations on retaking courses to meet qualitative standards should be reconsidered; whether students should be permitted to use Federal student aid funds to retake courses to get a better grade; whether the regulations governing SAP should be changed to require reviews more frequently than once each year; and whether the regulations governing cumulative completion and grade point average requirements should be revisited.

Another issue that will be considered during the upcoming negotiations is the definition of "credit hours". Credit hours are used to measure progress toward the completion of a degree or certificate, and in the award of Federal student aid, but there is no commonly accepted definition of what is an appropriate measure of a credit hour. A credit hour is a unit that weights the value, level, or time requirements of an academic course taken at an educational institution. At its most basic, a credit hour is a proxy measure of student learning. During the public hearings, the Department sought input on whether there should be a regulatory definition of a credit hour for Federal student aid purposes; whether different standards for earning a credit hour should be developed for undergraduate education, graduate study, distance education, and other non-traditional programs; and what relationship such a definition for purposes of Federal student aid should have to accrediting agencies' standards for program length.

Another issue to be discussed in the negotiations is "gainful employment in a recognized occupation". Certain for-profit institutions of higher education and postsecondary vocational institutions are generally allowed to use Federal student aid only for programs that prepare students for "gainful employment in a recognized occupation." This HEA requirement was

restated in 2008 by the Higher Education Opportunity Act (P.L. 110-315), and we sought input during the hearings on whether and how “gainful employment” could be more clearly defined. One suggestion was that the term could be defined in a way that takes into consideration a student’s likely earnings as well as the likely amount of student loan debt. The negotiators, in consultation with the Department of Labor, can consider that suggestion and other ideas on the issue.

During the public hearings, we also heard concerns expressed about overly-aggressive admissions officers and misleading advertising by postsecondary institutions. To address these concerns, we will consider whether the rules related to the prohibition against making incentive payments to recruitment personnel should be re-examined. The HEA prohibits an institution, as a condition of eligibility for participating in the Federal student aid programs, from providing any commission, bonus, or other incentive payment based directly or indirectly on success in securing enrollments or financial aid to any individual or entity engaged in recruiting or admissions. Current “safe harbor” regulations were intended to help institutions adopt compensation arrangements that are not considered to run afoul of these prohibitions.

Unfortunately, these regulations can result in what might otherwise be viewed as improper student recruiting activities by some unscrupulous institutions. The Department has received a large number of complaints from students and enrollment advisors about the high-pressure sales tactics of some postsecondary institutions. Some argue that tying staff compensation to the number of students enrolled is an inherent conflict of interest, and that the safe harbors undermine the statutory ban on incentive compensation. The Department has also heard from a number of educational institutions that the purported lack of clear guidance prior to

establishment of the safe harbors made it difficult for institutions to be confident of their compliance with the law. During the upcoming negotiations, we will consider whether the safe harbors should be maintained, amended, or eliminated in whole or in part from the regulations.

During the public hearings, we also heard complaints about false and misleading advertising and other information that is provided to prospective students and their families. While this issue is also under the purview of the FTC as it relates to for-profit entities, it is clear that the potential for false and misleading information can be an issue at all types of postsecondary education institutions. We will discuss this issue during the upcoming negotiations, and hope to have input from the FTC on its experience.

The HEA also includes a requirement that, to be eligible for Federal student aid, an institution be legally authorized by a State to offer a postsecondary educational program. The Department's interpretations of this provision have, over time, evolved into considering a State's failure to preclude the provision of postsecondary education as constituting that authorization. In the upcoming negotiations, we will discuss whether the HEA's State authorization requirement should involve at least some minimal level of affirmative approval by a State.

With this description of the Department's program integrity and consumer protection efforts as background, I will now address the recommendations made by the Government Accountability Office (GAO) in its recent report, Proprietary Schools: Stronger Department of Education Oversight Needed to Help Ensure Only Eligible Students Receive Federal Student Aid. Even before the Department received the report, we had already identified the two topics discussed by

GAO – the Definition of High School Diploma for the Purpose of Establishing Eligibility to Participate in Federal Student Aid and Ability to Benefit – as potential topics for negotiations in the upcoming round of negotiated rulemaking.

The HEA requires an institution of higher education participating in the Federal student aid programs to admit as a regular student only a person who have obtained a high school diploma, or its recognized equivalent, unless the student passes an “Ability to Benefit” test, as discussed below. The high school diploma serves as an indicator that the student is qualified to study at the postsecondary level. During the public hearings, institutions expressed concern about the administrative burden related to researching the legitimacy of a high school diploma. In addition, some witnesses described situations in which institutions direct students without high school diplomas to high schools with which the institution may have a business arrangement to complete their secondary school degree. Many institutions have asked the Department or State educational agencies, in order to reduce the burden on institutions, to develop either a comprehensive list of legitimate high schools or a listing of schools that are known as “diploma mills.” During the upcoming negotiated rulemaking, we will discuss these issues and develop regulatory changes, if appropriate.

Generally, students without a high school diploma or its recognized equivalent, a GED, can qualify for Federal student aid if they pass an independently administered test of basic math and English skills approved by the Secretary, called an “Ability to Benefit” (ATB) test. These ATB tests are published by private, for-profit and non-profit test publishers, and are administered to

students by an independent assessment center operated at public or non-profit institution of higher education, or by a certified independent test administrator.

The Department is responsible for approving ATB tests, and ensuring that each test publisher is monitoring the administration of its tests to students. The regulations provide that the test publishers are responsible for certifying and monitoring test administrators to ensure the independent and proper administration of ATB tests. Under the current regulations, test publishers are required to conduct, and submit to the Department, an analysis of test scores every 3 years to identify any test irregularities that would suggest that ATB tests are not being administered in accordance with the Department's regulations.

In its report, GAO recommended that the Department strengthen its monitoring of test publishers. GAO also recommended that the Department take steps to ensure that the analyses conducted by test publishers are sufficient to identify improper testing. Finally, GAO recommended that the Department modify its regulations to obtain more frequent analysis of test scores by test publishers to improve the integrity of the testing process.

In general, we agree with the findings and recommendations in the GAO report and, even before release of the report, we had taken steps to improve our monitoring and oversight of the ATB test publishers. The Department now has systems in place to monitor and track the 3-year test-anomaly analyses required of all test publishers. We are currently contracting for the services of independent psychometricians who will review not only the 3-year test analyses, but also any new or renewal requests received from test publishers. Moreover, the Department has begun

planning for changes to its school-reporting systems that will support student-specific ATB reporting. The results of this reporting will help us focus monitoring efforts on institutions that have a high number of ATB eligible students.

ATB testing is among the issues for the upcoming negotiated rulemaking sessions. Among the topics around ATB testing that will be discussed in those negotiations will be the establishment of tighter reporting and other controls on individuals who have been de-certified by a test publisher, and more frequent reporting by test publishers.

Let me conclude my remarks by emphasizing that our goal is to work to protect students and families as consumers of educational and training services of all types, to ensure the integrity of the student aid programs, and to use all the tools available to achieve those ends.

I would be pleased to respond to any questions that you might have.