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U.S. Department of Education
Before the
Committee on Health, Education, Labor, and Pensions
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Chairman Harkin, Ranking Member Enzi, and Members of the Committee:

Thank you for inviting me here today to discuss the U.S. Department of Education (Department) Office of Inspector General's (OIG) recent audit report on Ashford University's administration of the Title IV, Higher Education Act programs. This is my second appearance before this Committee since I became the Inspector General last year. It is an honor to lead this organization and to have the opportunity to share with you our efforts to ensure integrity and efficiency in Federal education programs and operations.

As requested, I will testify today on the findings of our audit that sought to determine whether, for its distance education programs, Ashford University (Ashford) complied with selected provisions of the *Higher Education Act of 1965*, as amended (HEA). I will also discuss more broadly our concerns involving Federal student aid used for distance education, an area vulnerable to risk and one in which OIG is currently focused on combating fraud and abuse.

Our audit of Ashford University's distance education programs was the fifth audit that my office has conducted involving distance education over the last 3 years. The

explosion of distance education in recent years—at for-profit, non-profit, and public institutions—has demanded our audit and investigative attention and the findings of our work highlight the need for greater oversight and/or statutory or regulatory change. The overarching challenge in this area is adapting to distance education the regulatory and oversight environment that is based on traditional, semester-based classroom instruction, and in particular, determining whether students in distance education are “regular students” as required by the HEA and actually in attendance for Federal student aid purposes. I will discuss this in more detail throughout this testimony.

Summary of OIG Audit of Ashford University

The following is a summary of our findings at Ashford and the recommendations we made to the Department to address the deficiencies identified.

Background

The institution was established in 1918 as a non-profit, residential junior college located in Clinton, Iowa, originally named Mount St. Clare College. In 1979, the institution received approval to award baccalaureate degrees, and in 2002, changed its name to The Franciscan University. In 2004, the school conferred its first graduate degrees and changed its name to The Franciscan University of the Prairies. The institution struggled financially due to declining enrollment. In 2005, Bridgepoint Education, Inc. (Bridgepoint), a publicly-traded for-profit corporation headquartered in San Diego, California, purchased the institution and changed its name to Ashford University. Ashford experienced immediate, tremendous

growth by offering distance education programs. This growth coincided with the 2006 elimination of the HEA's limitation on distance education. The limitation required that 50 percent or more of any schools' students could not be enrolled in distance education programs and that a school could not offer more than 50 percent of its courses on-line or via distance education. From the 2005-2006 award year to the 2008-2009 award year, recipients of Federal student aid enrolled in distance education at Ashford increased from about 1,800 to nearly 33,000. For award year 2004-2005, Ashford received just under \$3 million in Federal student aid funds, increasing to \$16 million for 2005-2006, and exceeding \$81 million for 2006-07. The tremendous growth continued, with Ashford receiving approximately \$613 million in Federal student aid funds for the 2009-2010 award year.

We selected Ashford for audit due to the significant amount of Federal student aid disbursed to its students and to Ashford's rapid expansion into distance education. We consider both to be risk factors that could impact an institution's ability to adequately administer the Federal student aid programs. Our initial objectives at Ashford were to focus on the types of problems we have identified at other institutions that provide distance education: (1) student eligibility for Federal student aid; (2) Federal student aid disbursements; and (3) return of Federal student aid program funds. After we began our onsite audit work and gained an understanding of Ashford's business model, we decided to also review its compliance with incentive compensation safe harbor regulations promulgated by the Department in 2002. We added this objective because we identified a significant increase in the number of Ashford's enrollment advisors, which in a 2 year period had increased from about 100 to nearly 1,000.

Audit Findings

Our audit identified significant deficiencies in Ashford's administration of the Federal student aid programs. Our primary finding was that Ashford had established a highly incentivized compensation plan for its enrollment advisors but could not demonstrate that its policies and business practices for compensating its enrollment advisors qualified for the regulatory safe harbors. Our other findings identified deficiencies similar to those that we found at other distance education institutions we have audited, such as deficiencies related to disbursement of Federal student aid funds and return of Federal student aid program funds. A summary of our findings at Ashford follows.

Incentive Compensation

In 1992, Congress banned incentive payments to school enrollment advisors based directly or indirectly upon success in securing student enrollments or awarding financial aid. However, in 2002, the Department issued regulations that provided 12 exceptions, known as safe harbors, that an institution may practice without violating the statutory ban. The first safe harbor allows for the payment of fixed compensation as long as the compensation is not adjusted up or down more than twice during any 12 month period and any adjustment is not based solely on the number of students enrolled.

Our audit found that Ashford had designed a compensation plan using a complex matrix to evaluate its enrollment advisors' performance and related salary

adjustments with the intention of qualifying for the first safe harbor. The plan assigned points for 8 quantitative factors tied to enrollments and 10 qualitative factors based on other professional performance measures. Every 6 months, enrollment advisors were to be evaluated and assigned points. Initially, 35 out of 100 possible points were based on securing enrollments. In April 2007, points assigned for securing enrollments rose to 74 out of 100. The point totals correlated to five different salary ranges within which salaries could vary between \$9,000 and \$34,000.

We found that Ashford did not adjust salaries based on its compensation plan as the plan was explained to us during our audit. For the 27 evaluations of enrollment advisors we tested, 92 percent of actual salaries did not match the amount we calculated using the formula that some Ashford officials stated was used to set salaries under the plan (other Ashford officials could not provide an explanation of how they determined salaries.) Four of the 27 evaluations resulted in salaries outside of the expected salary range.

In response to a draft of our audit report, Ashford explained that it allowed discretion for its managers in adjusting salaries; however, Ashford did not explain how the discretion was to be exercised and ultimately could not demonstrate why its enrollment advisors received a particular salary. As a

result, we could not conclude that it qualified for the safe harbor its compensation plan was designed to meet.

Student Eligibility for Federal Student Aid

Institutions are required to ensure that students receiving Federal student aid are engaged in academically-related activities. Ashford considered “clicks” into the “Learning Block” of its on-line educational software to support academically-related engagement to demonstrate attendance. In our analysis, which we based on the Department’s guidance, we did not consider a mere “click” of a link on Ashford’s Web site or in the “Learning Block” to be evidence of academic attendance as required by the regulations. For example, a student’s click on the announcement section of a “Learning Block” did not reflect academic attendance by the student. We obtained and reviewed electronic records for the courses that the students attended and used the course records that showed students’ academic postings to document attendance. We considered a student to have attended if we found evidence in the system that the student:

- Responded to an academically-related question asked by the instructor;
- Contributed to an academically-related discussion;
- Submitted a homework assignment; or
- Participated in an on-line quiz.

Ashford's reliance on clicks rather than on actual academic activity to determine student attendance was a contributing factor to the findings we identified involving disbursing and returning Federal student aid.

Federal Student Aid Disbursements

Ashford delivered distance education programs in non-term, credit-hour programs. For undergraduate programs, the courses were, for the most part, offered in 3 credit modules of 5 weeks in length. For non-term, credit-hour programs, an institution must disburse Federal student aid based on its payment period. Ashford's payment period comprised four 5-week modules that began on the first day of the first module and ended on the day that the student successfully completed the fourth module or 12 credits.

Ashford allowed students to take breaks of up to 29 days between modules, so payment periods varied by student. Based on our sample, we found that Ashford disbursed Federal student aid for students who were ineligible, because the students had not yet completed the prior payment period. Seventy-five percent of the improper disbursements to students in our sample were made to students who never became eligible. For the 2006-2007 award year, we identified over \$89,000 disbursed to students in our sample who were not eligible to receive Federal student aid and estimated that the total amount of ineligible disbursements Ashford made during the award year to be between \$3.7 and \$8.9 million. Although in most cases Ashford identified and corrected improper disbursements

after they were made, Ashford had use of the funds and may have earned interest it was not entitled to.

Ashford's procedures for charging tuition and fees and disbursing Federal student aid resulted in credit balances on student accounts. A credit balance occurs when funds disbursed exceed current allowable charges. Schools may hold credit balances if they follow regulatory requirements. We found that Ashford violated these requirements by holding credit balances for which there were no currently assessed institutional charges and by not properly obtaining a student's authorization to hold a credit balance for funds that normally would be promptly paid to the student. Ashford's authorization form did not provide the option to have the credit balance paid to the student. If a school does not obtain an authorization—or if the student revokes his or her prior authorization—the school must pay the credit balance to the student within 14 days. Ashford did not maintain a subsidiary ledger account to identify credit balances it held for longer than 14 days, as required by regulation, so we could not readily identify the total amount of credit balances Ashford was holding.

Return of Federal Student Aid Program Funds

When students cease attending, institutions are required to follow specific regulations to determine if Federal student aid must be returned to the Department or to the lender, as applicable. The Federal Government is harmed when an institution does not return Federal Family Education Loan funds to lenders timely

because it must pay interest on the average unpaid principal to lenders on subsidized student loans during in-school status and the grace period prior to entering repayment. Borrowers are harmed when an institution improperly retains loan funds because borrowers are responsible for any interest that accrues on their unsubsidized loan amounts that should have been returned to the lenders.

Ashford did not properly calculate the amounts it was to return because it did not (1) revise the payment period end date for students who did not complete their credits according to schedule; (2) use the correct last date of attendance at an academically related activity as the withdrawal date; and (3) correctly project the tuition charges that would have been charged to the students if they had completed the credits for the payment period. For the 2006-2007 award year, we identified more than \$29,000 in improperly retained funds for the students in our sample and estimated that Ashford improperly retained at least \$1.1 million for all students in the award year.

Ashford also did not return funds in a timely manner. Institutions are required to return unearned funds as soon as possible but no later than 45 days after they determine that a student has withdrawn. Of the 47 returns for students in our sample, 21 (45 percent) were paid late. The late payments ranged between 3 and 273 days.

A contributing factor to some of Ashford's incorrect calculations of funds to be returned and late payments was that Ashford did not always have documentation to support students' leaves of absence. If a student was not attending and was not on an approved leave of absence, Ashford was required to treat the student as having withdrawn and to determine if funds needed to be returned. Unapproved leaves of absence resulted in incorrect determinations of the last date of attendance for students who did not return to school, and in many cases, the incorrect determination of the last date of attendance resulted in incorrect amounts to be returned and contributed to late returns being paid.

Audit Recommendations

Based on our incentive compensation finding, we recommended that the Department require Ashford to provide records of all salary adjustments made during our audit period, and take appropriate administrative action for all salary adjustments that did not qualify for the safe harbor.

For our other findings, we recommended that Ashford be required to:

- Return Federal student aid funds which Ashford was not entitled to retain; and
- Cease drawing, disbursing, and holding credit balances for which there are no currently assessed institutional charges.

We also recommended that the Department consider taking appropriate administrative action based on Ashford's improper disbursement and return of Federal student aid funds. Ashford officials disagreed with all of our findings and recommendations.

We issued our final report on January 21, 2011. The Department must now determine how to address our recommendations. Ashford officials have the opportunity to provide additional comments and information that they believe may have a bearing on the Department's resolution of the audit. The Office of Management and Budget Circular A-50, *Audit Followup*, requires the Department to resolve our audit within 6 months after the final audit report was issued.

I would now like to take a moment to update you on our other work involving distance education.

Distance Education

The findings we have identified through our distance education audits and investigative work highlight the difficulty that all institutions face in administering Federal student aid in the distance education/on-line environment. These difficulties leave Federal student aid funds at significant risk of being disbursed to ineligible students and that inadequate refunds will be made for students who cease attendance in these programs.

Our investigative work continues to affirm the vulnerability of distance education to fraud. Since 2005, we have initiated 100 investigations of "fraud rings" targeting distance education programs at public, non-profit, and for-profit schools. Since we first

testified about this issue in October 2009, our case load in this area has more than doubled. We are currently investigating 66 fraud ring cases.

Our work in this area has revealed that large, loosely affiliated groups of criminals seek to exploit distance education programs to cause Federal student aid to be paid to them. These groups, which we refer to as “fraud rings,” typically have one or more ring leaders and associates who work to recruit friends, relatives, and other acquaintances to enroll into distance education programs for the sole purpose of improperly obtaining Federal student aid funds.

Once someone agrees to collaborate in the scheme, the ring leader often completes and submits admission forms, Federal financial aid applications, and supporting documentation, often including forgeries and false statements of eligibility, such as having a high school diploma or GED. The ring leaders sometimes assume the identity of scheme participants to access a school’s on-line classes in order to generate records of the individuals’ participation in the classes, which causes school officials to authorize financial aid payments. By targeting distance education programs, the participants avoid setting foot on campus and can exploit institutions outside their geographic area.

These fraud rings mainly target lower-cost institutions because the Federal student aid awards are sufficient to satisfy institutional charges (such as tuition) and result in disbursement of the balance of an award to the student for other educational expenses (such as books, room and board, and commuting expenses). Participants in these fraud

rings, however, have no intention of pursuing a degree or credential and have no legitimate educational expenses. Once a disbursement is received, a portion is typically kicked back to the ring leader or recruiter, who often controls the address or bank account where payments are sent.

Many of these fraud ring investigations have involved dozens of participating individuals. In one recently completed case, we obtained convictions of 64 participants who fraudulently obtained over \$530,000 in Federal student aid funds. A number of institutions have been aggressively engaged in trying to identify fraud in this area and have been communicating with our office regarding their findings or concerns.

To help address challenges facing the higher education community in the area of distance education, my office recently initiated an audit to determine what the Department has done and can do to help reduce the risks associated with distance education at all institutions. The objectives of this audit are to determine whether the Department: (1) adapted Title IV, HEA program requirements and guidance to mitigate the unique risks of fraud, waste, and abuse inherent in the distance education environment; and (2) adequately revised its monitoring of other entities (e.g., accrediting agencies, State agencies, institutions of higher education) to provide reasonable assurance of those entities' adherence to the requirements for distance education. This audit work will look at 2-year and 4-year distance education programs at public and non-profit schools, as well as for-profit schools. Our audit is just underway and we look to release a final report later this year.

We are also compiling a report for the Department on the vulnerabilities that we have identified in our investigative work in the distance education area that will recommend program enhancements to help mitigate these vulnerabilities. We plan to release this report within the next few months.

In addition, the Department's program integrity regulations that will go into effect on July 1 of this year make changes to the regulatory framework that we hope will help reduce waste, fraud, and abuse in the area of distance education. The changes include a further definition of academically-related engagement, defining a credit hour, calculating refunds in a non-term module system, and expanding the definition of misrepresentation. The Department will need to be vigilant to ensure the effectiveness of the new regulations and determine whether further changes are needed. We will monitor the implementation of the Department's new regulations, and will do whatever we can to ensure that the new regulations assist in protecting our nation's students, parents, and taxpayers.

This concludes my remarks on our audit of Ashford University and our concerns about Federal student aid funds used for distance education. I want to thank you again for inviting me to testify today. We look forward to working with this Committee and the 112th Congress to help improve Federal education programs and operations so they meet the needs of America's students and families and ensure tax dollars for education are protected from waste, fraud, and abuse. I am happy to answer any of your questions.