The 90/10 Rule Under HEA Title IV: Background and Issues

April 26, 2021

Congressional Research Service
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R46773

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SUMMARY

R46773

April 26, 2021

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The 90/10 Rule Under HEA Title IV: Background and Issues

Title IV of the Higher Education Act (HEA; P.L. 89-329), as amended, authorizes the primary programs that provide federal financial assistance (e.g., Pell Grants and Direct Loans) to students to assist them in obtaining a postsecondary education at eligible institutions of higher education (IHEs). IHEs seeking to participate in the Title IV programs must meet a variety of requirements. In general, many of these requirements apply to all institutional sectors—public, nonprofit, and proprietary (or private for-profit). One of the requirements, the 90/10 rule, applies only to proprietary IHEs.

Under the 90/10 rule, proprietary IHEs must derive at least 10% of their total tuition and fees revenues from non-Title IV sources (or, conversely, no more than 90% of their tuition and fees revenue from Title IV funds) during a fiscal year. The HEA and accompanying regulatory provisions specify how revenues are to be calculated. If an IHE fails to meet the rule's requirement in a single year, its certification to participate in the Title IV aid programs becomes provisional for two institutional fiscal years. If an IHE fails to meet the rule's requirements in two consecutive years, it loses its eligibility to participate in the Title IV programs for at least two institutional fiscal years. The rationale behind the 90/10 rule is twofold: (1) reducing fraud, waste, and abuse at proprietary IHEs and (2) if a proprietary IHE is of sufficient quality, it should be able to attract a specific percentage of revenues from non-Title IV sources.

A small percentage of proprietary IHEs derive greater than 90% of their tuition and fees revenues from Title IV sources. In award year 2017-2018 (the most recent year for which data are available), 12 proprietary IHEs (0.7%) did so. In addition, very few proprietary IHEs have lost Title IV eligibility for failure to meet the 90/10 rule's requirements in recent years. Over the 10-year period from award year 2008-2009 to award year 2017-2018, eight proprietary IHEs have lost their eligibility for failure to meet the requirements. None of these institutions have since regained Title IV eligibility.

In recent years, some Members of Congress have proposed a number of amendments to the 90/10 rule. Many of these proposals have arisen because there is a level of congressional and stakeholder dissatisfaction with the current rule, which largely stems from two primary reasons. First, the so-called *90/10 loophole* allows proprietary IHEs to include non-Title IV federal funds in the 10% threshold; thus, some stakeholders have alleged that proprietary IHEs target enrollment of servicemembers, veterans, and their families who are eligible for GI Bill educational benefits and Department of Defense Tuition Assistance in order to meet the 90/10 rule's 10% non-Title IV revenue requirement. Second, some believe that the 90/10 rule is arbitrary and treats proprietary IHEs inequitably, as it only applies to them even though some public and private nonprofit IHEs have similar student outcomes (e.g., graduation rates). Others, however, believe that treating proprietary IHEs differently is proper, because of their profit motive and because some rely heavily on Title IV revenues while producing poor student outcomes.

In light of these critiques, some Members of Congress have proposed several amendments to the rule. Prominent proposals that have been made include the following:

- terminating a proprietary IHE's eligibility to participate in the Title IV programs after a single year of noncompliance with the 90/10 rule;
- applying the 90/10 rule to public, nonprofit, and proprietary IHEs;
- eliminating the 90/10 rule altogether;
- adjusting the ratio used in the 90/10 rule (e.g., requiring IHEs to derive at least 15% of their revenues from non-Title IV sources); and
- requiring that proprietary IHEs may not derive more than a specific percentage of revenues from Title IV sources and military and veterans educational assistance benefits.

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Title IV of the Higher Education Act (HEA; P.L. 89-329), as amended, authorizes the primary and largest (in terms of participation and dollars) federal programs that provide financial assistance (e.g., Pell Grants and Direct Loans) to students to assist them in obtaining a postsecondary education at eligible institutions of higher education (IHEs).[1] In academic year 2019-2020, approximately 6,000 institutions were eligible to participate in the Title IV programs.[2] Of these IHEs, approximately 32% were public institutions, 30% were private nonprofit institutions, and 38% were proprietary (or private for-profit) institutions. In award year 2019-2020, approximately $114.5 billion was disbursed to students attending IHEs through the Title IV federal student aid programs.[3] Of these funds, approximately 53% was disbursed to students attending public IHEs, 34% to students attending private nonprofit IHEs, and 12% to students attending proprietary IHEs.

IHEs seeking to participate in the Title IV programs, and thus to be able to disburse Title IV funds to their students, must meet a variety of requirements.[4] For example, all IHEs, regardless of sector (i.e., public, private nonprofit, or proprietary) must be accredited by an accrediting agency recognized by the Department of Education (ED) and be authorized to offer postsecondary education by the state in which they are located. One requirement, unique to proprietary IHEs, is the *90/10 rule*. Under this rule, proprietary IHEs must derive at least 10% of their total tuition and fees revenue from non-Title IV funds (or, conversely, no more than 90% of their revenue from Title IV funds) during a fiscal year.[5]

This report examines the 90/10 rule. It begins with a history of the rule and then describes the current form of the rule. Finally, the report discusses a variety of congressional proposals relating to the rule, along with relevant policy considerations.

History of the 90/10 Rule

The current 90/10 rule traces its genesis to its predecessor, the 85/15 rule, which was put into effect by the Higher Education Amendments of 1992 (P.L. 102-325). Since that time, Congress has significantly updated the rule on several occasions. This section provides an overview of the impetus for developing the 85/15 rule and the numerous legislative changes that have been made to the rule over time. In describing these changes, this section also discusses two Government

[1] For more information on HEA Title IV aid programs, see CRS Report R43351, *The Higher Education Act (HEA): A Primer*.

[2] U.S. Department of Education, National Center for Education Statistics, Integrated Postsecondary Education Data System Data Explorer, "Number and percentage distribution of Title IV institutions, by control of institution, level of institution, and region: United States and other U.S. jurisdictions, academic year 2019–20," https://nces.ed.gov/ipeds/Search?query=&query2=&resultType=all&page=1&sortBy=date_desc&overlayTableId=27423. This figure excludes foreign IHEs that participate in the Direct Loan program. In award year 2019-2020, 377 foreign IHEs participated in the program. Of those, nine (2.4%) were proprietary IHEs. (U.S. Department of Education, Office of Federal Student Aid, Student Aid Data Center "Title IV Program Volume Reports: Loan Volume, Direct Loan Program," AY2019-2020 Q4, https://studentaid.gov/sites/default/files/fsawg/datacenter/library/dl-dashboard-ay2019-2020-q4.xls).

[3] U.S. Department of Education, Office of Federal Student Aid, Student Aid Data Center "Title IV Program Volume Reports: Award Year Summary by School Type," 2019-2020, https://studentaid.gov/sites/default/files/fsawg/datacenter/library/SummarybySchoolType.xls. This total includes Title IV funds made available through the Direct Loan, Pell Grant, Iraq/Afghanistan Service Grant, and TEACH Grant programs. It excludes Title IV funds made available through the Federal Supplemental Educational Opportunity Grants, and Federal Work-Study programs.

[4] For an overview of the various requirements IHEs must meet to participate in the Title IV programs, see CRS Report R43159, *Institutional Eligibility for Participation in Title IV Student Financial Aid Programs*.

[5] HEA §487(a)(24).

Accountability Office (GAO) reports that evaluated proprietary IHEs' reliance on Title IV funds and may have informed congressional decisionmaking.

Pre-1992 Institutional Accountability Issues

Congressional interest in limiting the amount of revenue a proprietary IHE could derive from Title IV funds arose for a variety of reasons. During the late 1980s and into the 1990s, Congress, GAO, and ED's Office of Inspector General (OIG) conducted investigations of the federal student aid programs and found evidence of extensive waste, fraud, and abuse.

While concerns over these problems were raised across all institutional sectors, the OIG identified proprietary IHEs as a "major contributor" to the fraud, waste, and abuse.[6] For example, the OIG found that some proprietary IHEs set tuition prices that bore "little or no relation to the quality of the training" offered, student employment prospects in fields relevant to the students' training, or the prospect of a salary that would enable students to repay their federal student loans. Rather, the OIG found that tuition prices were often set based on the maximum amount of available federal student aid, which in many cases led to inflated institutional prices. At the same time, the OIG found that many public institutions offered training in similar fields that was of sufficient quality to allow students to gain entry-level employment, and for lower prices than were being charged by proprietary IHEs.[7]

Similarly, GAO found that some IHEs used the federal student loan program as a source of "easy income" with little regard for students' ability to repay their loans.[8] According to GAO, loan default rates of students who attended proprietary IHEs were much higher than default rates of students who attended public and private nonprofit IHEs.[9] Congressional witnesses testified and information was offered to indicate that some proprietary IHEs focused efforts on recruiting low-income and educationally disadvantaged students and obtaining federal student aid funds rather than providing students with a meaningful education.[10]

At the same time, concerns were raised that the program integrity triad was not providing sufficient oversight of the activities of proprietary IHEs. The triad is a three-part regulatory structure consisting of accreditation by an ED-recognized accrediting agency, state authorization (frequently referred to as *state licensure* at the time), and ED certification, which all IHEs must meet to participate in the Title IV programs.[11] There were concerns that the accreditation and state authorization standards were "inconsistent and of varying degrees of quality."[12] Accreditation with respect to proprietary IHEs was described as "providing little, if any, assurance that quality

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[6] Letter from the Office of Inspector General, House, *Congressional Record*, (June 29, 1994), pp. H5327-H5328 (hereinafter, "*Congressional Record*, Letter from the Office of the Inspector General").

[7] Ibid.

[8] U.S. Government Accountability Office (GAO), *Guaranteed Student Loans*, GAO/HR-93-2, December 1992, p. 7.

[9] Specifically, default rates of individuals who borrowed their last student loan in 1983 and defaulted by September 30, 1987, were 39% at proprietary IHEs and 25% at two-year public IHEs (the next highest default rate). U.S. Government Accountability Office (GAO), *Guaranteed Student Loans: Analysis of Student Default Rates at 7,800 Postsecondary Schools*, GAO/HRD-89-63BR, July 1989, p. 15.

[10] See, for example, U.S. Congress, Senate Committee on Governmental Affairs, Permanent Subcommittee on Investigations, *Abuses in the Federal Student Aid Programs*, 101st Cong., 2nd sess., February 20, 26, 1990, S.Rept. 101-659 (Washington, DC: GPO, 1990), p. 3 (hereinafter, "Senate Committee on Government Affairs, *Abuses in the Federal Student Aid Programs*").

[11] For additional information, see CRS Report R43159, *Institutional Eligibility for Participation in Title IV Student Financial Aid Programs*.

[12] Senate Committee on Government Affairs, *Abuses in the Federal Student Aid Programs*, p. 128.

training" was being provided,[13] while state licensing procedures were found to be "largely ineffective in assuring quality education."[14] In addition, investigations found that ED's certification procedures were inadequate to protect students' or the federal government's interests.[15] A congressional investigation also found that a lack of communication among the triad's components and within ED compounded the shortcomings in institutional oversight.[16]

As a result, Congress debated a variety of ways to strengthen the program integrity triad in general, and the federal role in certification in particular. The idea of preventing waste, fraud, and abuse based on institutional dependence on federal funds was already being used in the veterans educational assistance programs. Under the GI Bill programs (unless they were exempt or requirements were waived), the Department of Veterans Affairs (VA, then referred to as the Veterans Administration) was prohibited from paying benefits to students enrolled in courses in which over 85% of the enrollees had all or part of their tuition, fees, and other charges paid to them or for them by the VA or the institution.[17] The VA 85/15 rule was originally conceived in the early 1950s based on experience with the WWII GI Bill.[18] It was intended to prevent for-profit trade schools of dubious quality from generating excessive profits by overcharging the VA for benefits for veterans enrolled in schools established to train veterans with GI Bill benefits, enrolling such veterans exclusively, and employing misleading advertising to maintain or increase their enrollments.[19] Evaluations of the veterans educational assistance programs found that the rule helped prevent abuse.[20]

One proposal for addressing the concerns related to proprietary institutions was limiting the amount of revenue a proprietary IHE could derive from Title IV funds. Proponents of the policy believed it would stem abuse and might restore some healthy market-based incentives, as proprietary IHEs would no longer be able to set prices at a level that might be beyond the reach of students not fully supported by federal financial aid.[21] The OIG postulated that the policy would force institutions to set prices "to reasonable levels relative to the value of the training offered, without direct federal price controls."[22] Proponents further argued that if a proprietary IHE is of sufficient quality, it should be able to attract a specific percentage of revenues from non-Title IV programs.[23] Opponents of the policy argued that it could effectively punish schools that served low-income students who were reliant on Title IV aid to attend school and may limit

[13] Ibid., p. 125.

[14] Ibid., p. 21.

[15] Senate Committee on Government Affairs, *Abuses in the Federal Student Aid Programs*, p. 32. See also U.S. Government Accountability Office (GAO), *Student Financial Aid: Education Can Do More to Screen Schools Before Students Receive Aid*, GAO/HRD-91-145, September 1991.

[16] Senate Committee on Government Affairs, *Abuses in the Federal Student Aid Programs*, p. 132.

[17] 38 U.S.C. §3680A(d).

[18] U.S. Congress, House Select Committee to Investigate Educational, Training, and Loan Guaranty Programs Under GI Bill, *Select Committee to Investigate Educational, Training, and Loan Guaranty Programs Under GI Bill*, Created pursuant to H. Res. 93, 82nd Cong., 2nd sess., February 14, 1952, H.Rept. 1375, pp. 2, 7, 29-49.

[19] Ibid.

[20] U.S. Congress, Committees on Veterans' Affairs, *Veterans' Education Policy*, committee print, prepared by Commission to Assess Veterans' Education Policy, 100th Cong., 2nd sess., September 22, 1988, S. Prt. 100-125 (Washington, DC: GPO, 1988), p. 164.

[21] See, for example, *Congressional Record*, Letter from the Office of the Inspector General.

[22] *Congressional Record*, Letter from the Office of the Inspector General.

[23] See, for example, Rep. William David Ford, "Department of Labor, Health, and Human Services and Education, and Related Agencies Appropriations Act, 1995," *Congressional Record*, daily edition, vol. 140, part 85 (June 29, 1994), p. H5321.

postsecondary educational access for low-income students if proprietary IHEs were forced to deny such students admission in order to meet the required percentage of revenues not derived from Title IV student aid.[24]

The Higher Education Amendments of 1992

As part of the Higher Education Amendments of 1992 (P.L. 102-325), Congress instituted a number of changes to strengthen the program integrity triad in general, and the federal role in certification in particular.[25] For example, Congress lowered the cohort default rate thresholds for IHEs participating in the federal student loan program, thus making them more rigorous and increasing the number of IHEs likely to be excluded from participation in the program, and strengthened the criteria and procedures to be used by ED when evaluating accrediting agencies for recognition. Among these provisions, the act established the 85/15 rule.

Under the 1992 amendments, the definition of *proprietary institution of higher education* for purposes of Title IV program eligibility was amended to require that proprietary IHEs derive at least 15% of their tuition and fee revenues from non-Title IV sources. The effect of including the requirement in the definition of proprietary IHE was that proprietary IHEs that failed to meet the requirement in a single year were immediately ineligible to participate in the Title IV programs. The act did not contain provisions specifying how institutional revenues were to be calculated; determining how the requirement was to be implemented was left largely to the discretion of ED.

Following its enactment, the 85/15 rule generated considerable contention. For example, the Career College Association, which represented proprietary IHEs, brought unsuccessful court actions against the provision.[26] Also, ED regulations to implement the rule were delayed by language in appropriations statutes[27] due to concerns over the formula used to calculate the percentage of funds derived from non-Title IV sources and potential impacts on schools and students.[28] Ultimately, the regulations did not go into effect until July 1, 1995.

1997 GAO Study of Student Outcomes at Proprietary Institutions

Following the 1992 HEA amendments, and amidst continued concerns about proprietary IHE performance, Members of Congress requested that GAO examine the relationship between proprietary IHE performance and their reliance on Title IV student aid.[29] GAO found that

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[24] U.S. Congress, Senate Committee on Governmental Affairs, Permanent Subcommittee on Investigations, *Abuses in the Federal Student Aid Programs*, Part 4, 101st Cong., 2nd sess., October 10, 1990, S.Hrg. 101-659, Pt.4 (Washington, DC: GPO, 1991), p. 185.

[25] Other changes made to address fraud, waste, and abuse in the Title IV programs included limiting the Title IV eligibility of short-term programs, establishing criteria ED must review when making accrediting agency recognition decisions, setting stricter institutional cohort-default rate requirements, and strengthening ED's ability to gauge an IHE's financial stability.

[26] See, for example, Jim Zook, "Higher Education Act Survives Legal Challenges," *The Chronicle of Higher Education*, September 7, 1994.

[27] Department of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1995 (P.L. 103-333). U.S. Department of Education, Dear Colleague Letter, GEN-95-26, "Implementation of the 85 percent rule to determine eligibility for Title IV student assistance programs," May 1, 1995, https://ifap.ed.gov/dear-colleague-letters/05-01-1995-gen-95-26-implementation-85-percent-rule-determine-eligibility.

[28] See, for example, Rep. William F. Goodling, "Department of Labor, Health, and Human Services and Education, and Related Agencies Appropriations Act, 1995," *Congressional Record*, daily edition, vol. 140, part 85 (June 29, 1994), p. H5321.

[29] U.S. Government Accountability Office (GAO), *Proprietary Schools: Poorer Student Outcomes at Schools That*

proprietary IHEs that relied more heavily on Title IV funds as a source of revenue tended to have poorer student outcomes in terms of student completion and placement rates and higher student loan default rates.[30] GAO concluded that requiring proprietary IHEs to obtain a substantially higher percentage of revenues from non-Title IV sources could result in the federal government realizing substantial savings from a reduction in student loan defaults. However, GAO acknowledged that increasing the required proportion of non-Title IV revenues could limit student access to postsecondary education, as more stringent revenue requirements might result in proprietary IHEs admitting fewer low-income students who are reliant on Title IV student aid.[31]

The Higher Education Amendments of 1998

Under the Higher Education Amendments of 1998 (P.L. 105-244), Congress amended the 85/15 rule to make it less restrictive by altering the percentage of non-Title IV revenues that proprietary IHEs were required to earn. Under the amendments, proprietary IHEs were required to earn at least 10%, rather than 15%, of their revenues from non-Title IV funds to be eligible to participate in the Title IV programs.[32] Thus, the 85/15 rule became the 90/10 rule.

The Higher Education Opportunity Act of 2008

Following the 1998 amendments, there was continued debate over whether the 90/10 rule truly served as a measure of institutional quality. Some commentators stated that it had been "incoherently applied"[33] and questioned whether the rule, as implemented, was fair and accurate.[34] It was also asserted that rather than measuring institutional quality, the rule measured the socio-economic status of a school's students and served as an incentive for schools to either not serve the most needy students or to raise tuition in order to comply with the rule.[35] Others, however, believed that schools should continue to demonstrate that they were able to derive some revenues from non-Title IV sources[36] and believed that the 90/10 rule was serving its purpose of preventing abuse.[37]

Ultimately, under the Higher Education Opportunity Act of 2008 (HEOA; P.L. 110-315), Congress and the Administration made several changes to the 90/10 rule, most of which made it

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Rely More on Federal Student Aid, GAO/HEHS-97-103, June 1997, p. 1, https://www.gao.gov/assets/230/224202.pdf.

[30] Ibid., pp. 5-8.

[31] Ibid., pp. 8-10.

[32] A review of the legislative history leading to the enactment of the Higher Education Amendments of 1998 did not reveal a stated rationale for the change.

[33] U.S. Congress, Senate Committee on Health, Education, Labor, and Pensions, *The Higher Education Act and the Workforce: Issues for Reauthorization*, 108th Cong., 2nd sess., March 4, 2004, S.Hrg.108-426 (Washington, DC: GPO, 2004), p. 83.

[34] U.S. Congress, House Committee on Education and the Workforce, Subcommittee on 21st Century Competitiveness, *H.R. 3039, The Expanding Opportunities in Higher Education Act of 2003*, 108th Cong., 1st sess., September 11, 2003, H.Hrg. 103-31 (Washington, DC: GPO, 2004), pp. 3, 31-32.

[35] U.S. Congress, Senate Committee on Health, Education, Labor, and Pensions, *The Higher Education Act and the Workforce: Issues for Reauthorization*, 108th Cong., 2nd sess., March 4, 2004, S.Hrg.108-426 (Washington, DC: GPO, 2004), pp. 83-84; U.S. Congress, House Committee on Education and the Workforce, Subcommittee on 21st Century Competitiveness, *H.R. 3039, The Expanding Opportunities in Higher Education Act of 2003*, 108th Cong., 1st sess., September 11, 2003, H.Hrg. 103-31 (Washington, DC: GPO, 2004), pp. 3, 31-32.

[36] U.S. Congress, House Committee on Education and Labor, *College Opportunity and Affordability Act of 2007*, report to accompany H.R. 4137, 110th Cong., 1st sess., December 19, 2007, 110-500, pp. 268-269.

[37] Kellie Bartlett, "For-profit colleges and reauthorization," *Chronicle of Higher Education*, May 16, 2005.

less difficult for proprietary IHEs to meet the rule's requirements. However, the amendments also strengthened reporting and disclosure requirements associated with the rule. In describing changes to the rule ultimately made under the HEOA, a House report accompanying a House-passed reauthorization bill from the prior year stated that the amendments were a "carefully balanced approach toward easing the burden of the [90/10] rule on schools while providing additional safeguards to protect students and the federal fiscal interest."[38]

The HEOA removed the 90/10 rule from the definition of proprietary IHE. That is, the rule was eliminated as a condition of Title IV institutional eligibility. Consequently, proprietary IHEs that violated the 90/10 rule in a single year would no longer lose their Title IV eligibility immediately. The amendments established a period of provisional eligibility for the two years following the failure to meet the requirement (discussed in detail in the "Enforcement" section). Proprietary IHEs that violated the rule for two consecutive years would lose their Title IV eligibility for at least two years.

The HEOA also changed the revenue sources used for determining compliance with the 90/10 rule. The amendments specified certain sources of revenue that may be counted in the 10% that comprises total revenues from non-Title IV sources. Many of these sources were allowed under regulation prior to the HEOA, but the HEOA also added several new sources. For example, the HEOA newly allowed proprietary IHEs to count revenue earned from qualified non-Title IV eligible education or training programs toward the 10% requirement.[39] In effect, a proprietary IHE could have its Title IV eligible programs fully paid for by Title IV federal student aid, but have the Title IV aid count as only 90% of its total revenue if the other 10% of its tuition and fees revenue is derived from non-Title IV eligible education programs.

The HEOA established new reporting requirements for ED. Under the amendments, ED is required to submit annually to Congress a report that contains, for each proprietary IHE, the amount and percentage of revenues received from Title IV sources and the amount and percentage of revenues received from other sources. The HEOA also required ED to publicly disclose on its College Navigator website the identity of each proprietary IHE that fails to satisfy the 90/10 rule's requirements, and the extent to which the IHE failed to do so.[40] Finally, the HEOA required GAO to complete a one-time report to Congress on proprietary IHEs subject to the rule (see below).

2010 GAO Study on Proprietary IHEs Subject to the 90/10 Rule

In 2010, GAO published a report in accordance with Congress's HEOA directive to analyze and report on proprietary IHEs subject to the 90/10 rule.[41] Some key findings from the report included the following:

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[38] U.S. Congress, House Committee on Education and Labor, *College Opportunity and Affordability Act of 2007*, report to accompany H.R. 4137, 110th Cong., 1st sess., December 19, 2007, H.Rept. 110-500, p. 269.

[39] The HEA establishes requirements regarding which programs of education a student may receive Title IV aid for while enrolled. Many Title IV eligible IHEs offer non-Title IV eligible education programs, including noncredit programs.

[40] The HEA requires ED to provide resources to prospective and current students and their families about colleges to help guide their decisions on the College Navigator website available at https://nces.ed.gov/collegenavigator/.

[41] U.S. Government Accountability Office (GAO), For-Profit Schools: Large Schools and Schools that Specialize in Healthcare Are More Likely to Rely Heavily on Federal Student Aid, GAO-11-4, October 2010, https://www.gao.gov/assets/320/310897.pdf.

- Between 2003 and 2008, almost all proprietary IHEs reported complying with the 90/10 rule.
- School characteristics associated with higher than average Title IV revenue rates included, for example, (1) enrolling high proportions of low-income students, (2) offering distance education, (3) having a publicly traded parent company, and (4) being part of a corporate chain.
- When controlling for the effects of other characteristics, schools that enrolled more than 2,000 students, specialized in healthcare, or did not grant degrees were more likely than other IHEs to have Title IV revenue rates above 85%.[42]
- A school's tuition rate was not associated with a high likelihood of the school having Title IV revenue rates above 85%.

The American Rescue Plan Act of 2021[43]

The Department of Defense (DOD) provides educational assistance to eligible servicemembers and their families, while the VA provides educational assistance to eligible servicemembers and veterans and their families. Benefits provided to eligible individuals include those made available under the GI Bills and DOD's Tuition Assistance (TA) program and may be used at qualifying proprietary IHEs and other qualifying institutions. The Post-9/11 GI Bill, which went into effect in 2009, increased the amount of GI Bill benefits paid compared to previous GI Bills and authorized benefits to be paid directly to educational institutions.[44] From FY2008 to FY2011, GI Bill benefits increased from approximately $2.8 billion to approximately $9.8 billion.[45] Most recently in FY2020, approximately $1.2 billion in Post-9/11 GI Bill benefits were paid directly to for-profit educational institutions to cover tuition and fee charges.[46] TA distributes tuition and fee payments to IHEs on behalf of participating servicemembers. In FY2019, DOD requested almost $0.5 billion for such payments.[47]

These direct payments to for-profit educational institutions[48] during a period of increased congressional scrutiny on proprietary IHEs focused some attention on the effects of such

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[42] GAO was unable to include a measure of student income in its model of characteristics that were associated with an increased likelihood of very high (i.e., above 85%) Title IV revenue rates. GAO, *Large Schools and Schools that Specialize in Healthcare Are More Likely to Relay Heavily on Federal Student Aid,* p. 24.

[43] Portions of this subsection were drafted by Cassandria Dortch, CRS Specialist in Education Policy.

[44] Educational institutions include IHEs and other institutions. For a full description of the GI Bills, see CRS Report R42785, *Veterans' Educational Assistance Programs and Benefits: A Primer*.

[45] Department of Veterans Affairs, President's Budget Request FY2010, Volume III, p. 2B-2; and Department of Veterans Affairs, President's Budget Request FY2013, Volume III, p. 2B-2.

[46] Department of Veterans Affairs, GI Bill Comparison Tool, https://www.va.gov/gi-bill-comparison-tool, downloaded by CRS on April 20, 2021.

[47] Department of Defense budget justification documents, and information provided to CRS by military legislative liaisons in 2018.

[48] For purposes of GI Bill benefits, an *educational institution* is "any public or private elementary school, secondary school, vocational school, correspondence school, business school, junior college, teachers' college, college, normal school, professional school, university, or scientific or technical institution, or other institution furnishing education for adults. Such term includes any entity that provides training required for completion of any state-approved alternative teacher certification program (as determined by the Secretary). Such term also includes any private entity (that meets such requirements as the Secretary may establish) that offers, either directly or under an agreement with another entity (that meets such requirements), a course or courses to fulfill requirements for the attainment of a license or certificate generally recognized as necessary to obtain, maintain, or advance in employment in a profession or vocation in a high technology occupation (as determined by the Secretary). The term also includes any qualified provider of

payments on IHEs, GI Bill and TA recipients, and GI Bill and TA expenditures. In general, there has been concern that a disproportionate share of Post-9/11 GI Bill benefits have been paid to and used for attendance at proprietary IHEs that have poor educational outcomes for veterans and are not the best use of federal dollars.[49] There have been several reports of false or predatory marketing or advertising practices on the part of some proprietary IHEs attempting to enroll GI Bill and TA participants, in part to pass the 90/10 requirement.[50] Some stakeholders have called the intention of some proprietary IHEs to use GI Bill and TA funds to stay below the 90% threshold the *90/10 loophole*.

Because of these concerns, for several years some stakeholders have recommended requiring that tuition and fee revenues received collectively from Title IV benefits, GI Bill benefits, TA, and all other federal educational benefits not exceed 90% of total tuition and fee revenues at proprietary IHEs. However, concerns with this policy option have been raised. Implementing such a change might result in some IHEs discouraging GI Bill and TA participants from enrolling or may result in the closure of some IHEs. Either potential outcome could be seen as limiting veteran choices in postsecondary education. Either potential outcome could also been seen as adversely affecting some servicemembers and veterans because some proprietary IHEs offer a high-quality education, have strong educational outcomes, offer flexible instructional modes, offer flexible schedules, and may award educational credits that might not be accepted as transfer credits at public or private nonprofit IHEs following a school closure. In addition, school closures may be seen as wasting federal dollars and increasing the cost of GI Bill benefits to the federal government, as some participants may use more benefits to complete their education even as other participants might be permanently dissuaded from finishing their education.[51]

Recently, Congress and the President enacted the American Rescue Plan of 2021 (P.L. 117-2), which amended the HEA to specify that proprietary IHEs may not derive more than 90% of their tuition and fees revenues from *federal education assistance funds*. Federal education assistance funds are defined as "federal funds disbursed or delivered to or on behalf of a student to be used to attend such institution." This definition seemingly encompasses GI Bill and TA benefits, and potentially other federal funds used to pay a student's tuition and fees at an IHE. The amendment is to apply to institutional fiscal years beginning on or after January 1, 2023.

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entrepreneurship courses." 38 U.S.C. §3452(c).

[49] See, for example, U.S. Congress, Senate Health, Education, Labor and Pensions Committee, *New Data on Post-9/11 G.I. Bill Benefits Show Disproportionate Share of Taxpayer Dollars Going to For-Profit Colleges with Concerning Outcomes*, September 22, 2011.

[50] See, for example, Michael Stratford, "For-Profit-College Marketer Settles Allegations of Predatory Practices," *Chronicle of Higher Education*, June 26, 2012; Andy Thomason, "Defense Dept. Lifts Suspension of U. of Phoenix from Tuition Assistance Program," *The Chronicle of Higher Education*, January 15, 2016.

[51] For supporting and opposing positions, see, for example, U.S. Congress, Senate Committee on Homeland Security and Governmental Affairs, *The 90/10 Rule: Improving Educational Outcomes for Our Military and Veterans*, hearing, 113th Cong., 1st sess., July 23, 2013, S.Hrg. 113-206 (Washington, DC: GPO, 2014); and U.S. Government Accountability Office (GAO), *Post-9/11 GI Bill: Veterans Affected by School Closures*, GAO-19-553T, June 19, 2019. The Congressional Budget Office estimated that restoring GI Bill benefits and providing transitional Post-9/11 GI Bill housing stipends to students who attend institutions that permanently close after 2017 during an academic term would increase spending for education benefits by $150 million over the 2018-2027 period (Congressional Budget Office, *H.R. 3218: Harry W. Colmery Veterans Educational Assistance Act of 2017*, September 6, 2017, pp. 7-8).

Current 90/10 Rule

Currently, HEA Section 487(a)(24) requires that as part of their program participation agreements (PPAs),[52] proprietary IHEs must agree to derive at least 10% of tuition and fee revenues from non-Title IV sources.[53] Each proprietary IHE calculates and discloses to ED the percentage of revenues derived from Title IV program funds in a footnote to its annual audited financial statements.[54] HEA Section 487(d)(1) and regulations specify how revenues are to be calculated for purposes of the 90/10 rule. Under HEA Section 487(d)(2), if a proprietary IHE fails to meet the 90/10 rule requirements in any one institutional fiscal year,[55] then the IHE's certification[56] to participate in the Title IV programs becomes provisional for two institutional fiscal years (see the "Enforcement" section). An IHE that fails to meet the 90/10 rule requirements for two consecutive institutional fiscal years loses eligibility to participate in the Title IV programs for at least two institutional fiscal years.

Formula

As noted above, each proprietary IHE calculates and discloses to ED the percentage of revenues derived from Title IV program funds. The current formula that proprietary IHEs use to calculate their Title IV tuition and fees revenue for purposes of the 90/10 rule can be stated as follows:[57]

> Title IV funds used for tuition, fees, and other institutional charges to students
>
> *divided by*
>
> Revenues generated from (1) tuition, fees, and other institutional charges for students enrolled in Title IV-eligible programs of education and qualified non-Title IV eligible programs of education *plus* (2) institutional activities necessary for the education or training of students.[58]

If the result after multiplying the result of the formula by 100 is greater than 90%, then an IHE is deemed to be out of compliance with the 90/10 rule.

In calculating revenues to be included in the formula, proprietary IHEs must use the cash basis of accounting.[59] Under the cash basis of accounting, revenue is recognized only when it is received,

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[52] IHEs that participate in the Title IV student aid programs must have a current PPA. A PPA is a document in which an IHE agrees to comply with the laws, regulations, and policies applicable to the Title IV programs.

[53] Both domestic and foreign proprietary IHEs must meet the 90/10 rule requirements. Foreign IHEs are only eligible to participate in the Direct Loan program. HEA §102(a)(1)(C).

[54] 34 C.F.R. §668.23(d)(3). In general, an IHE that participates in the Title IV student aid programs must have an independent auditor conduct an annual audit of its financial statements. The resulting financial statement audit must be submitted to ED. HEA §487(c)(1)(A).

[55] An institutional fiscal year is a one-year period that an IHE uses for financial reporting and budgeting. An IHE may set its own institutional fiscal year. Office of Federal Student Aid, *Federal Student Aid Handbook: 2020-2021*, vol. 2, p. 90 (hereinafter, "*FSA Handbook*").

[56] Certification refers to ED's determination that an IHE meets Title IV participation requirements. An IHE may not participate in the Title IV programs until ED has certified it for participation. For additional information, see HEA Section 498.

[57] The mathematical expression of the 90/10 calculation is described in 34 C.F.R. Part 668, Subpart B, Appendix C.

[58] Institutional activities necessary for the education or training of students could include, for example, a restaurant operated by an IHE in which students may be required to work as part of their training. U.S. Congress, House Committee on Education and Labor, *College Opportunity and Affordability Act of 2007*, report to accompany H.R. 4137, 110th Cong., 1st sess., December 19, 2007, H.Rept. 110-500, p. 269.

[59] 34 C.F.R. §668.28(a)(2). For institutional loans made to students on or after July 1, 2008, and prior to July 1, 2012,

rather than when it is earned. For the purposes of determining compliance with the 90/10 rule, revenue is considered "an inflow or other enhancement of assets to an entity, or a reduction of its liabilities resulting from the delivery of production of goods or services."[60] A proprietary IHE may only recognize revenue when it represents cash received from a source outside of the institution.

In calculating an IHE's 90/10 ratio, consideration of funds received is determined on a student-by-student basis. That is, an IHE determines how much tuition and fees for each student is paid for with Title IV funds and how much is paid for with non-Title IV funds.

Numerator

The numerator of the 90/10 calculation must include institutional revenues derived from the Title IV programs, including the Pell Grant, Direct Loan, Federal Work-Study (FWS), and Federal Supplemental Educational Opportunity Grant (FSEOG) programs.[61] Some exclusions apply (see the "Exclusions" section).

Proprietary IHEs must generally treat Title IV funds as used to pay tuition, fees, and institutional charges prior to the application of other funds, regardless of whether the institution credits the funds to the student's institutional account or pays funds directly to the student.[62] Some exceptions to this rule apply.

Specifically, IHEs may consider funds from the following sources as used to pay tuition, fees, and institutional charges[63] prior to applying Title IV funds:

- grants provided by nonfederal public agencies (e.g., state aid) or private sources (e.g., assistance from the student's employer) that are independent of the IHE;[64]
- a contract with a federal, state, or local government agency for the purpose of providing job training to low-income individuals in need of such training (e.g., contracts under Title I of the Workforce Innovation and Opportunity Act[65]);

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proprietary IHEs included as revenue the net present value of the loans made to the students during the applicable fiscal year. As this provision is no longer applicable, regulations that become effective July 1, 2021, rescind provisions relating to it. U.S. Department of Education, "Distance Education and Innovation," 85 *Federal Register* 54818, September 2, 2020.

[60] *FSA Handbook*, vol. 2, p. 94.

[61] Under the FWS and FSEOG programs, participating IHEs are required to provide a nonfederal match equal to a portion of the federal funds they receive. The federal funds to support these programs are included in the numerator of the 90/10 calculation. The nonfederal match is excluded entirely from the 90/10 calculation. 34 C.F.R. §668.28.

[62] HEA §487(d)(1)(C). In administering Title IV funds to students, ED first makes the Title IV funds for which the student is eligible available to their IHE. The IHE then applies the Title IV funds to the student's institutional account and retains institutional charges (e.g., tuition and fees). The remainder of the Title IV funds are then refunded to the student.

[63] Institutional charges are generally those for room and board and other educational expenses that are paid directly to the school. For additional information on institutional charges, see *FSA Handbook*, vol. 4, pp. 30-31.

[64] This might also include, for example, student scholarships from a local business. U.S. Department of Education, "Institutional Eligibility Under the Higher Education Act of 1965, as Amended," 59 *Federal Register* 6449, February 10, 1994.

[65] For additional information, see CRS Report R46306, *Direct Federal Support of Individuals Pursuing Training and Education in Non-degree Programs*.

- funds from savings plans for educational expenses established by or on behalf of the student if the saving plan qualifies for special tax treatment under the Internal Revenue Code (IRC) (e.g., 529 accounts);[66] and
- qualified institutional scholarships, which may include tuition discounts, if the funds are derived from an outside source unrelated to the IHE.[67]

In effect, the application of funds from the above-listed sources prior to the application of any Title IV funds to tuition, fees, and institutional charges diminishes the amount of Title IV funds that would otherwise appear in the numerator, thereby making it easier for IHEs to meet 90/10 rule requirements.

Denominator

The denominator of the 90/10 calculation must include all institutional revenues derived from a variety of statutorily specified sources, unless excluded (see the "Exclusions" section). Institutions must include the following sources of revenue in the denominator:

1. funds paid by or on behalf of a student by a party other than the IHE

   (a) for tuition, fees, and other institutional charges for Title IV-eligible programs of education[68]; and

   (b) for tuition, fees, and other institutional charges for certain non-Title IV eligible education or training programs[69]; and
2. funds generated from qualifying activities conducted by the IHE that are necessary for the education and training of the students (e.g., salon services receipts from customers that result from a required cosmetology course).[70]

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[66] U.S. Congress, House Committee on Education and Labor, *College Opportunity and Affordability Act of 2007*, report to accompany H.R. 4137, 110th Cong., 1st sess., December 19, 2007, H.Rept. 110-500, p. 269. For additional information on 529 plans, see CRS Report R42807, *Tax-Preferred College Savings Plans: An Introduction to 529 Plans*.

[67] Qualified institutional scholarships (which may include tuition discounts) are those scholarships provided by a proprietary IHE "in the form of monetary aid or tuition discounts based upon the academic achievements or financial need of students, disbursed during each fiscal year from an established restricted account, and only to the extent that funds in that account represent designated funds from an outside source or income earned on those funds." HEA §487(d)(1)(D)(iii).

[68] HEA Section 487(d)(1)(E) and accompanying regulations require IHEs to include as institutional revenues "from sources other than funds received under" Title IV, the proceeds of Unsubsidized Federal Family Education Loan (FFEL) and Direct Loan program Stafford Loans that exceed the loan limits in effect on May 6, 2008, and that were received by a student on or after July 1, 2008, but before July 1, 2011. This provision was enacted in response to the Ensuring Continued Access to Student Loans Act (ECASLA; P.L. 110-27), which raised the loan limits for Unsubsidized FFEL Direct Loan program Stafford Loans by $2,000 for most types of undergraduate students. The excess of loan proceeds resulting from the increased loan limits were technically Title IV funds that affected the percentage of funds proprietary IHEs generated from Title IV. Because the specified timeframe for loan disbursement has passed, this provision is no longer applicable.

[69] The certain non-Title IV eligible programs are education programs that are not eligible for Title IV purposes and that (1) are approved or licensed by the appropriate state agency; (2) are accredited by an ED-recognized accrediting agency; (3) provide an industry-recognized credential, or prepare students to take an examination for an industry-recognized credential; (4) provide training needed for students to maintain state licensing requirements, or (5) provide "training needed for students to meet additional licensing requirements for specialized training for practitioners that already meet the general licensing requirements in a field." 34 C.F.R. §668.28(a)(3)(iii).

[70] Qualifying activities are those that are (1) "conducted on campus or at a facility under the control of the institution," (2) "performed under the supervision of a member of the institution's faculty," and (3) "required to be performed by all

Funds under category 1 above include, but are not limited to, all revenues included in the numerator of the 90/10 calculation.

Any non-Title IV sources of revenue can be applied to a student's tuition, fees, and other institutional charges after the application of Title IV funds and the funds applied before Title IV funds discussed above. This could include, for example, DOD educational benefits and veterans educational assistance. As such, the following types of institutional aid are to be included in the denominator to the extent to which they are needed to fulfill tuition, fees, and other institutional charges not covered by Title IV aid:

- qualified institutional scholarships using funds from an outside source unrelated to the IHE,[71]
- qualified tuition discounts using funds from an outside source unrelated to the IHE,[72]
- loan repayments received on institutional loans made on or after July 1, 2012,[73] and
- qualified recourse loans.[74]

Exclusions

Several types of funds are excluded from both the numerator and the denominator of the 90/10 calculation. These include the following:

- funds paid directly to a student under the FWS program, unless the IHE credits the student's school account with the FWS funds (i.e., the funds are used to pay a student's institutional charges);
- institutional funds used to match Title IV federal student aid funds;[75]
- Title IV program funds that were refunded to ED because the student to whom (or on whose behalf) the funds were paid failed to complete the period of enrollment (i.e., Title IV funds required to be returned under a return of Title IV funds calculation);[76] and

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students in a specific educational program at that institution." HEA §487(d)(1)(B)(ii).

[71] See footnote 67.

[72] See footnote 67.

[73] When institutional loans are initially made to students, they are excluded from the 90/10 calculation altogether, as they do not represent an inflow of assets to the IHE at that time. For institutional loans made to students on or after July 1, 2008, and prior to July 1, 2012, proprietary IHEs included as revenue the net present value (NPV) of the loans made to the students during the applicable fiscal year. In short, the formula to determine the NPV of institutional loans took into account the discounted value of cash flows caused by inflation over time. As the exception is no longer applicable, regulations that become effective July 1, 2021, rescind several provisions relating to it. U.S. Department of Education, "Distance Education and Innovation," 85 *Federal Register* 54818, September 2, 2020.

[74] Recourse loans are loans made by private lenders "that are in any manner guaranteed by the school." Proceeds from these loans may be included in the denominator if the IHE's reported revenues are also reduced by the amount of recourse loan payments made to recourse loan holders during the same fiscal year. In addition, the non-recourse portion of a partial recourse loan (i.e., any portion not guaranteed by the IHE) may also be included as revenue in the 90/10 calculation, if the contract identifies the percentage of the sale that is non-recourse. *FSA Handbook*, vol. 2, p. 94.

[75] This includes, for example, the institutional funds used to match the federal contribution under the FWS, FSEOG, and Perkins Loan programs.

[76] For additional information on return to Title IV calculations, see *FSA Handbook*, vol. 5.

- the amount charged for books, supplies, and equipment, unless the costs are included as tuition, fees, or other institutional charges.[77]

Table 1 summarizes the treatment of various sources of revenue under the 90/10 calculation. This is not necessarily an exhaustive list of all revenues that an IHE may derive, but rather a summary of the specific funding sources discussed in this report. Only revenue sources that an IHE may currently receive are included in the table.

Table 1. Treatment of Different Types of Revenue in the 90/10 Rule Calculation

Revenue Sources[ab]	Additional Information
Included in both the numerator and the denominator	
Title IV programs funds	The following Title IV funds are excluded from the calculation altogether: • FWS funds paid directly to students, unless the funds are credited to a student's school account; • institutional funds used to match Title IV federal student aid funds[c]; and • funds refunded to ED because the student to whom (or on whose behalf) the funds were paid failed to complete the period of enrollment.
Included in the denominator	
Grants provided by nonfederal public agencies or private sources independent of the IHE	
Contracts with federal, state, or local government agencies for the purpose of providing job training to low-income individuals	
Savings plans for educational expenses established by (or on behalf of) a student if the savings plan qualifies for special tax treatment under the IRC	
Qualified institutional scholarships	• Must be awarded based on the academic achievement or financial need of students • Must be disbursed from an established restricted account with designated funds from an outside source or income earned from such funds
Qualified tuition discounts	• Same requirements as qualified institutional scholarships
Loan repayments made on institutional loans made on or after July 1, 2012	• IHE may only include as revenues repayments received during the appropriate fiscal year for previously disbursed institutional loans.
Qualified recourse loans	• To include proceeds from a recourse loan in the denominator, an IHE must reduce reported revenues by the amount of recourse loan payments made to recourse loan holders during the same institutional fiscal year. • The non-recourse portion of a partial recourse loan may be included in the denominator if the loan contract identifies the percentage of the sale that is non-recourse.

[77] Section 487(d)(1)(F)(ii) of the HEA also specifies that funds received by an IHE from a state under the Leveraging Educational Assistance Partnership (LEAP) program, Special Leveraging Educational Assistance Partnership (SLEAP) program, and the Grants for Access and Persistence (GAP) program are excluded from the calculation. These three programs provided federal matching grants to states to assist them in establishing need-based scholarship programs for postsecondary students, among other activities. The SLEAP program was replaced by the GAP program under the HEOA (P.L. 110-315). The LEAP and GAP programs have not received federal appropriations since FY2010.

Qualified activities conducted by the IHE necessary for the education and training of students	Qualifying activities must be • conducted on campus or at a facility under institutional control, • performed under the supervision of institutional faculty, and • required of all students in a specific educational program.

Source: CRS analysis of HEA §487(d) and 34 C.F.R. §668.28.

a. With the exception of institutional activities necessary for the education or training of students, all revenue sources listed represent funds paid for tuition, fees, and other institutional charges.

b. Funds received under the LEAP, SLEAP, and GAP programs are excluded from this table, as the SLEAP program no longer exists and the LEAP and GAP programs have not received federal appropriations since FY2010.

c. This includes institutional funds used to match the federal contribution under the FWS, FSEOG, and Perkins Loan programs.

Enforcement

ED requires each proprietary IHE that has a PPA to disclose to it the percentage of revenues derived from Title IV program funds[79] in a footnote to its annual audited financial statements.[80] An IHE may have a single PPA covering the main campus and some or all of its branch campuses and locations, or it may have separate PPAs covering the main campus and each branch campus and location that meets Title IV requirements. Thus, an IHE's 90/10 ratio may represent revenues from multiple campuses.[81] In general, an IHE must submit its audited financial statements to ED within six months of the end of its fiscal year.[82] However, a proprietary IHE that fails to satisfy the 90/10 rule for its most recent fiscal year must report such failure to ED within 45 days of the end of the institutional fiscal year.[83]

Conversion to Nonprofit or Public Status

ED guidance requires a school that converts from a proprietary to a nonprofit or public status for Title IV purposes to continue to report its compliance with the 90/10 rule for at least one complete institutional fiscal year after ED has approved the change in status. If the school fails the 90/10 rule requirements for the first year under the new status, it would be required to report 90/10 rule compliance for an additional year. Other problems with 90/10-rule disclosure may result in the school being required to report for one more year.[78]

Under HEA Section 487(d)(2), if a proprietary IHE fails to meet the 90/10 rule requirements in any one institutional fiscal year, then its certification to participate in the Title IV programs becomes provisional for up to two institutional fiscal years following the institutional fiscal year in which it failed to meet the requirements. Under provisional certification, although ED certifies

[78] *FSA Handbook*, vol. 2, p. 92.

[79] IHEs must disclose other 90/10 rule-related information as well, including the dollar amount of the numerator and denominator of the 90/10 calculation. See U.S. Department of Education, Office of Inspector General, *Guide for Audits of Proprietary Schools and for Compliance Attestation Engagements of Third-Party Servicers Administering Title IV Programs*, September 2016, p. 28, https://www2.ed.gov/about/offices/list/oig/nonfed/schoolserviceauditguide.pdf.

[80] 34 C.F.R. §668.23(d)(3). In general, an IHE that participates in the Title IV student aid programs must have an independent auditor conduct an annual audit of its financial statements. The resulting financial statement audit must be submitted to ED. HEA §487(c)(1)(A).

[81] Whether a PPA covers one or more campuses depends on how an IHE is organized, which is a determination made by the IHE. For example, three institutional campuses may be covered by a single PPA, or three related campuses may be covered under three individual PPAs. In the first scenario, the three campuses would collectively report a single 90/10 calculation, and in the second scenario, each individual campus would report its own 90/10 calculation.

[82] 34 C.F.R. §668.23(a)(1).

[83] 34 C.F.R. §668.28(c)(3).

that an IHE has demonstrated it is capable of meeting the Title IV institutional participation standards and is able to meet its responsibilities under its PPA, the IHE must meet "any additional conditions specified in the institution's program participation agreement that the Secretary requires the institution to meet in order for the institution to participate under provisional certification," which may include, for example, meeting additional reporting requirements.[84]

An IHE that fails to meet the 90/10 rule requirements for two consecutive institutional fiscal years loses eligibility to participate in the Title IV programs for at least two institutional fiscal years. To regain eligibility, the IHE must demonstrate compliance with all Title IV eligibility requirements for at least two institutional fiscal years after the institutional fiscal year in which it became ineligible.[85] The HEA requires ED to publicly disclose on the College Navigator[86] website the identity of any proprietary IHE that fails to meet any 90/10 rule requirement.

Historical Compliance

This section illustrates proprietary IHE's performance under the 90/10 rule for the past 11 years. **Figure 1** shows the percentage of proprietary IHEs deriving specified percentages of revenues from Title IV sources during the period from award year (AY) 2007-2008 (the first year in which the HEOA amendments were in effect) to AY2017-2018 (the most recent year for which data are available). ED reports IHEs' compliance with the 90/10 rule for institutional fiscal years that end in a specified award year. For example, an IHE's performance in its institutional fiscal year that ended December 31, 2017, would be reported in AY2017-2018, which encompasses July 1, 2017, through June 30, 2018. In addition, ED only reports data for those IHEs whose financial statements and 90/10 revenue percentages have been reviewed and accepted by ED.[87] Thus, it is possible that some proprietary IHEs' performances under the 90/10 rule are not included in the data.

Figure 1 shows that, generally, a small percentage of proprietary IHEs derive greater than 90% of their revenues from Title IV sources. Over the 11 award year period depicted, fewer than 2% of reported proprietary IHEs derived greater than 90% of their revenue from Title IV sources in any given year, ranging from a high of 1.4% (29) in AY2011-2012 to a low of 0.2% (4) in AY2015-2016. Over the same period, between 11% (209 in AY2007-2008) and 21% (441 in AY2011-2012) of reported proprietary IHEs derived greater than 85% but no more than 90% of their revenues from Title IV sources. Overall, most proprietary IHEs derive between 60% and 85% of their revenues from Title IV sources.

[84] 34 C.F.R. §668.13(c)(4)(ii).

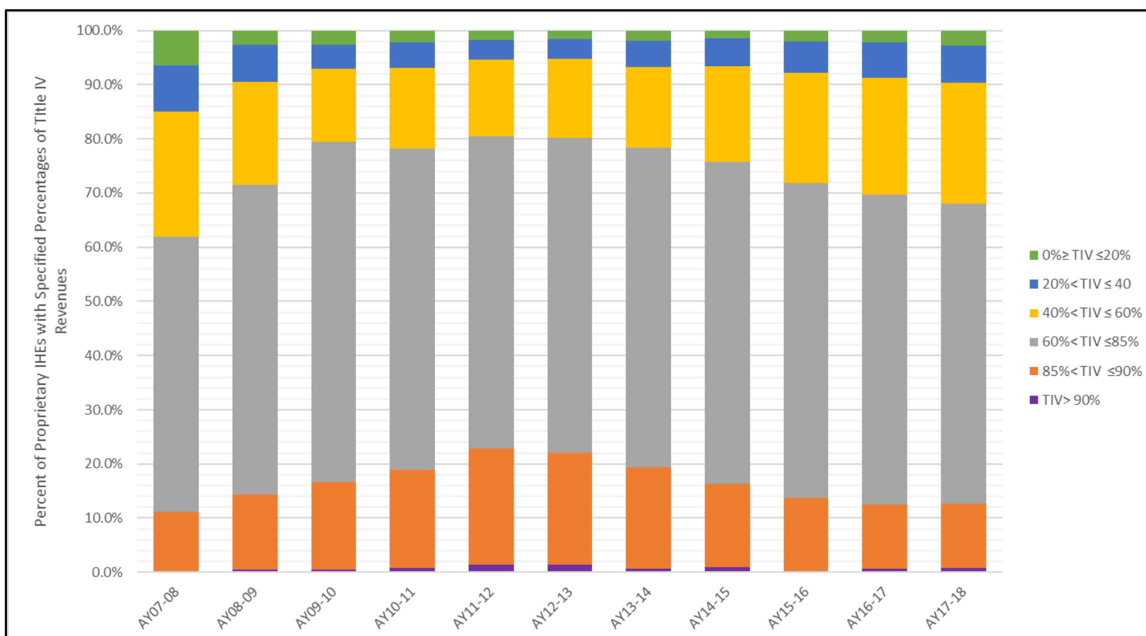
[85] HEA §487(d)(2)(A); 34 C.F.R. §668.28(c)(1).

[86] U.S. Department of Education, National Center for Education Statistics, College Navigator, https://nces.ed.gov/collegenavigator/.

[87] Letter from Robert L. King, Assistant Secretary, Office of Postsecondary Education, to Robert "Bobby" Scott, Chairman, House Committee on Education and Labor, October 29, 2019, https://studentaid.gov/sites/default/files/2017-2018-transmittal.pdf.

Figure 1. Proprietary IHEs' Percentage of Title IV Revenues

Institutional Fiscal Years Ending in AY2007-2008 through AY2017-2018



Source: CRS analysis of U.S. Department of Education data (U.S. Department of Education, Federal Student Aid Data Center, "Proprietary School 90/10 Revenue Percentages," https://studentaid.gov/data-center/school/proprietary).

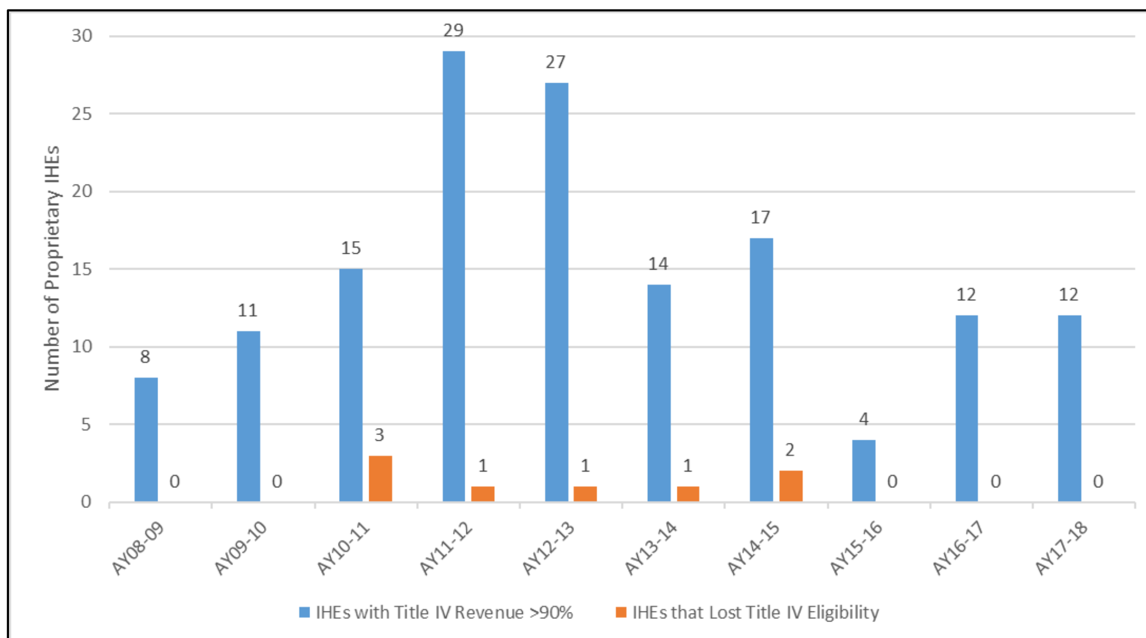
Notes: ED reports IHEs' compliance with the 90/10 rule for institutional fiscal years that end in a specified award year. "TIV" is tuition and fees revenue derived from Title IV sources.

Figure 2 depicts the number of proprietary IHEs that failed the 90/10 requirement in a single year and those that lost Title IV eligibility due to failing the 90/10 requirement for two consecutive years in each of the past 10 award years (i.e., since the transition to IHEs losing Title IV eligibility after two consecutive years of noncompliance). The same data limitations that apply to **Figure 1** (discussed above) apply to **Figure 2**. Very few proprietary IHEs (eight total) have lost Title IV eligibility due to failing the 90/10 requirement for two consecutive years over the last 10 award years for which data are available. None of those eight IHEs have since regained Title IV eligibility.[88] Substantially more proprietary IHEs have failed the 90/10 requirement in at least one year, ranging from a high of 29 in AY2011-2012 to a low of 4 in AY2015-2016.

[88] CRS analysis of U.S. Department of Education, Postsecondary Education Participants System, downloaded March 15, 2021.

Figure 2. Proprietary IHEs Failing to Meet 90/10 Rule Requirements and Losing Title IV Eligibility

Institutional Fiscal Years Ending in AY2008-2009 through AY2017-2018



Source: CRS analysis of Department of Education data, U.S. Department of Education, Federal Student Aid Data Center, "Proprietary School 90/10 Revenue Percentages," https://studentaid.gov/data-center/school/proprietary.

Note: ED reports IHEs' compliance with the 90/10 rule for institutional fiscal years that end in a specified award year.

Recent Congressional Proposals

In recent years, some Members of Congress have proposed a number of amendments[89] to the 90/10 rule. These proposals have arisen because there is a level of congressional and stakeholder dissatisfaction with the current rule. Some stakeholders advocate for closing the so-called *90/10 loophole* (see the "The American Rescue Plan Act of 2021" section). Some stakeholders believe that the 90/10 rule treats proprietary IHEs inequitably, as it only applies to them even though some public and nonprofit IHEs may have similar student outcomes (e.g., graduation rates).[90] Others, however, believe that treating proprietary IHEs differently is proper, as many rely heavily on Title IV revenues while too frequently producing poor student outcomes.[91] Several proposals that may garner attention, along with relevant policy issues and considerations, are discussed below.[92]

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[89] See, for example, S. 3114 (116th Congress) and H.R. 3179 (116th Congress).

[90] U.S. Congress, Senate Committee on Homeland Security and Governmental Affairs, *The 90/10 Rule: Improving Educational Outcomes for Our Military and Veterans*, 113th Cong., 1st sess., July 23, 2013, S.Hrg.113-206 (Washington, DC: GPO, 2014), p. 4.

[91] Danielle Douglas-Gabriel, "Republican leader backs restrictions that could end for-profit colleges' aggressive recruitment of veterans," *The Washington Post*, November 19, 2019.

[92] Policy issues and options discussed in this section are based on existing and prior congressional legislative proposals, proposals forwarded by presidential administrations, topics addressed at congressional hearings, and issues and options identified by external researchers, think tanks, and practitioner groups. CRS has also identified some additional considerations that might be explored in evaluating these policy issues.

The 90/10 Rule as a Condition of Title IV Eligibility

The HEOA eliminated the 90/10 rule as a condition of institutional eligibility for participation in the Title IV programs by removing it from the HEA Section 102 definition of a proprietary IHE, but instituted a requirement for IHEs to agree to meet the 90/10 rule's provisions as part of their PPAs. In addition, the HEOA established that proprietary IHEs violating the 90/10 rule in a given year do not immediately lose their Title IV eligibility; they may only lose Title IV eligibility after two consecutive years of failing the 90/10 requirement. As indicated in **Figure 2**, since AY2007-2008 very few IHEs have lost Title IV eligibility under this construct. As such, some Members of Congress want the 90/10 rule to be more consequential and have proposed reinstating it as a condition of Title IV institutional eligibility by returning it to the HEA Section 102 definition of proprietary IHE.[93] Doing so would mean that a single year of noncompliance with the rule would result in immediate loss of Title IV eligibility for proprietary IHEs that are presumably of low quality.

Making the 90/10 rule a condition of Title IV eligibility would likely require some proprietary IHEs to take action to decrease their reliance on Title IV funds to ensure compliance with the rule in a single year. Making the 90/10 rule a condition of Title IV eligibility may also result in the closure of some presumably low quality IHEs, as their primary source of revenues would be eliminated if they fail to meet the rule's requirements. Current and prospective students may subsequently choose to attend higher quality IHEs. However, concerns have been raised that immediate loss of Title IV eligibility may harm students,[94] as their educational experience may be suddenly disrupted either because they have to transfer to another IHE to access Title IV aid or because the proprietary IHE they attended had to close.[95]

On the other hand, retaining the 90/10 rule as part of the PPA may allow some proprietary IHEs time to take corrective action to meet the 90/10 requirement after failing in a single year. Permitting corrective time periods may be especially relevant to IHEs that experience a decrease in revenues from non-Title IV sources due to circumstances beyond their control, such as an economic downturn.[96]

Application of the 90/10 Rule to Public and Nonprofit IHEs

Only proprietary IHEs must comply with the 90/10 rule; thus, some believe that the rule inequitably singles out these institutions. As such, some recent legislative proposals would apply the 90/10 rule to public and nonprofit IHEs as well.[97] Proponents of such measures argue that if the 90/10 rule truly relates to institutional quality, then it should apply to all IHEs equally. This may be especially true, they argue, because some public and nonprofit IHEs have student outcomes (e.g., graduation rates) that are similar to those of proprietary IHEs.[98] Proponents also

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[93] See, for example, H.R. 4674 (116th Congress), as reported by the House Committee on Education and Labor.

[94] See, for example, Stephen Burd, "House Panel Deals a Setback to For-Profit Colleges and a Victory to Privacy Advocates," *The Chronicle of Higher Education*, July 14, 2005.

[95] For additional information on issues faced by students when their IHEs close, see CRS Report R44737, *The Closure of Institutions of Higher Education: Student Options, Borrower Relief, and Other Implications*.

[96] Letter from Jason Altmire, President and CEO, Career Education College and Universities, to Joseph R. Biden, President-Elect, January 11, 2021, https://www.career.org/uploads/7/8/1/1/78110552/cecu_ltr_biden_administration_priorities_and_policy_recommendations_2021-1-11.pdf.

[97] See, for example, S. 3114 (116th Congress).

[98] U.S. Congress, Senate Committee on Homeland Security and Governmental Affairs, *The 90/10 Rule: Improving Educational Outcomes for Our Military and Veterans*, 113th Cong., 1st sess., July 23, 2013, S.Hrg.113-206

argue that regulation of IHEs should be sector-neutral and that the federal government should not favor one type of IHE over another through burdensome regulations "merely because of tax status."[99]

Those who oppose proposals to apply the 90/10 rule to all types of IHEs believe that treating proprietary IHEs differently is proper, arguing that many proprietary IHEs produce poor student outcomes. They believe that because proprietary IHEs rely heavily on Title IV aid and produce comparatively poor student outcomes, they pose the highest risk to students and taxpayers; thus, imposing restrictions on Title IV revenues at proprietary IHEs is a necessary guardrail.[100] In addition, proprietary IHEs are fundamentally different from public and nonprofit IHEs because they have a fiduciary duty to maximize profits for stakeholders, an incentive that does not exist for public and nonprofit IHEs.[101]

While applying the 90/10 rule to all sectors would presumably increase accountability across all Title IV participating IHEs, the extent to which public and nonprofit IHEs rely on Title IV funds as a source of revenues, as currently calculated under the 90/10 rule, is unclear. Data necessary to calculate an IHE's 90/10 ratio are generally not publicly available and largely remain with IHEs; therefore, it is difficult to estimate effects of changes to the application of the 90/10 rule.[102] If, however, the 90/10 rule were applied to public and nonprofit IHEs, it is possible that some IHEs at risk of failing the 90/10 requirement may adjust their practices in ways similar to those reported by proprietary IHEs (e.g., limiting access to low-income student populations).[103] Application of the 90/10 rule to public and nonprofit IHEs would also likely increase administrative burden for the schools.

Elimination of the 90/10 Rule

One of the primary assumptions underlying the 90/10 rule is that if a proprietary IHE is of sufficient quality, it should be able to attract a certain percentage of revenues from non-Title IV sources. At the same time, some Members of Congress believe that the rule is not an appropriate proxy measure for institutional quality[104] and have introduced legislation to eliminate the rule altogether.[105] Proponents of eliminating the rule argue that it penalizes IHEs that enroll high

(Washington, DC: GPO, 2014), p. 4.

99 Mary Clare Amselem, *Progressive Plan for Higher Education is Harmful Policy for America*, Heritage Foundation, Issue Brief No. 6023, October 29, 2020, p. 6, https://www.heritage.org/sites/default/files/2020-10/IB6023.pdf.

100 U.S. Congress, House Committee on Education and Labor, *College Affordability Act*, report to accompany H.R. 4674, 116th Cong., 2nd sess., December 28, 2020, H.Rept. 116-700 (Washington, DC: GPO, 2020), p. 344. See also, Danielle Douglas-Gabriel, "Republican leader backs restrictions that could end for-profit colleges' aggressive recruitment of veterans," *The Washington Post*, November 19, 2019.

101 U.S. Congress, House Committee on Education and Labor, *College Affordability Act*, report to accompany H.R. 4674, 116th Cong., 2nd sess., December 28, 2020, H.Rept. 116-700 (Washington, DC: GPO, 2020), p. 343.

102 Some reports have attempted to calculate public and nonprofit IHEs' performance under the 90/10 rule. See, Vivien Lee and Adam Looney, *Understanding the 90/10 Rule: How reliant are public, private, and for-profit institutions on federal aid?*, Brookings Institution, January 30, 2019, https://www.brookings.edu/wp-content/uploads/2019/01/ES_20190116_Looney-90-10.pdf and Mark Kantrowitz, *Consequences of the 90/10 Rule*, August 19, 2013, p. 16.

103 U.S. Congress, Senate Committee on Homeland Security and Governmental Affairs, *The 90/10 Rule: Improving Educational Outcomes for Our Military and Veterans*, 113th Cong., 1st sess., July 23, 2013, S.Hrg.113-206 (Washington, DC: GPO, 2014), p. 60.

104 U.S. Congress, House Committee on Education and the Workforce, *Promoting Real Opportunity, Success, and Prosperity Through Education Reform Act*, report to accompany H.R. 4508, 115th Cong., 2nd sess., February 8, 2018, H.Rept. 115-550 (Washington, DC: GPO, 2018), pp. 213-214.

105 See, for example, H.R. 4508 (115th Congress).

proportions of underserved student populations and "discourages them from providing the type of access that federal student funding initiatives were intended to enable"[106] because the rule in effect measures enrolled student characteristics (e.g., socio-economic status) rather than educational quality. Proponents also argue that because the rule is applied only to proprietary IHEs, it is largely arbitrary, as public and nonprofit IHEs can and do enroll students with similar characteristics.

Proponents of eliminating the 90/10 rule have also surmised that the rule leads to increased tuition costs for students, as IHEs may adjust their prices upward to remain below the 90% threshold and ensure that they do not fail the rule's requirements.[107] It is unclear whether that is the case,[108] however, as there may be limits on IHEs' ability to increase tuition and fees in order to comply with the rule. First, this is because students may be unable to make up the difference as tuition charges increase if available aid does not change. Second, the calculation of the 90/10 rule restricts the use of institutional aid as revenue (for more formation, see the "Formula" section), and proprietary IHE's access to state student aid programs may be limited.[109] Both of these considerations may limit an IHE's use of these sources as revenue for 90/10 rule purposes.

Opponents of eliminating the rule argue it is necessary because proprietary IHEs should not be funded solely by federal dollars and that federal dollars should not be used to shore up low-quality schools. They believe that if a school is of sufficient quality, a party other than the federal government, such as an employer, student, or private scholarship organization, should be willing to pay for attendance at the school.[110] There are also concerns that without the 90/10 rule, students may lose critical protections against institutional practices of fraud and abuse. In addition, some opponents argue that the rule does not lead to increased tuition for students.[111]

A complete repeal of the 90/10 rule would treat proprietary IHEs the same as public and nonprofit IHEs with respect to measuring institutional revenues and may enable proprietary IHEs to enroll students of certain backgrounds without concern about failing a federal revenue standard. Other measures of institutional quality that were enacted at the time of or after the enactment of the original 85/15 rule would presumably remain in place, which may provide some level of institutional accountability absent the 90/10 rule. Such measures include the cohort default rate,[112]

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[106] Anthony J. Guida Jr. and David Figuli, "Higher Education's Gainful Employment and 90/10 Rules: Unintended 'Scarlett Letters' for Minority, Low-Income, and Other At-Risk Students," *The University of Chicago Law Review*, vol. 79, no. 1 (Winter 2012), p. 132.

[107] U.S. Congress, House Committee on Education and the Workforce, *Promoting Real Opportunity, Success, and Prosperity Through Education Reform Act*, report to accompany H.R. 4508, 115th Cong., 2nd sess., February 8, 2018, H.Rept. 115-550 (Washington, DC: GPO, 2018), pp. 213-214.

[108] See, for example, U.S. Government Accountability Office (GAO), For Profit Schools: Large Schools and Schools that Specialize in Healthcare Are More Likely to Rely Heavily on Federal Student Aid, GAO-11-4, October 2010, p. 32, https://www.gao.gov/assets/320/310897.pdf and Mark Kantrowitz, Consequences of the 90/10 Rule, August 19, 2013.

[109] For example, states may operate state student aid programs for which only students enrolled in public or nonprofit IHEs are eligible. See, for example, Va. Code Ann. §23.1-628 and §23.1-638.

[110] The Institute for College Access & Success and The Project on Student Debt, *Q&A on the For-Profit College "90-10" Rule*, January 25, 2016, p. 2, https://ticas.org/wp-content/uploads/legacy-files/pub_files/90-10_qa_0.pdf.

[111] Lauren Walizer, *HEA Proposals Fail Low-Income Students on Affordability, Equity, and Connecting to Work*, CLASP, December 2017, p. 2, https://www.clasp.org/sites/default/files/publications/2017/12/2017.12.8%20HEA%20Proposal%20Fails%20Low-Income%20Students_0.pdf.

[112] An institution's cohort default rate is the percentage of an IHE's federal loan recipients who enter repayment in a given fiscal year and who default within three years. For additional information, see CRS Report R43159, *Institutional Eligibility for Participation in Title IV Student Financial Aid Programs*.

financial responsibility standards,[113] and more robust standards ED must use to recognize accreditation agencies, which in turn play a quality assurance role in evaluating an IHE's educational quality.[114] These measures gauge institutional practices that may not reflect market viability, a key rationale behind enactment of the original 85/15 rule. In addition, there is also a level of discontent with the effectiveness of these other measures.[115]

Ratio Adjustments

Since the enactment of the Higher Education Amendments of 1998, proprietary IHEs have been required to derive no more than 90% of their revenues from Title IV sources, a less stringent standard than what was required under the 85/15 rule. As indicated in **Figure 1**, a small percentage of proprietary IHEs derive greater than 90% of their revenues from Title IV sources, and thus may experience consequences for failure to comply with the 90/10 rule. As such, some Members of Congress would like rules relating to institutional Title IV revenues to be more stringent by adjusting the ratio of Title IV to non-Title IV revenues. Recently, congressional proposals have focused on modifying the rule to require that proprietary IHEs derive no more than 85% of their revenues from Title IV funds.[116] The remainder of this subsection will focus on potential considerations for the creation of an 85/15 rule; however, many considerations discussed herein could be applied to other proposals that would require proprietary IHEs to derive even larger percentages of revenues from non-Title IV sources, such as an 80/20 rule.[117]

Proponents of adjusting the rule's ratio to 85/15 argue that the current 90/10 ratio permits excessive amounts of federal funds to flow to IHEs that do not provide a good return on investment in terms of student outcomes.[118] Requiring proprietary IHEs to derive a larger portion of revenues from other sources, they argue, would ensure that the rule is a meaningful measure of a proprietary IHE's market viability and restore the efficacy of the metric as originally intended by Congress when enacted in 1992.[119]

The argument for requiring proprietary IHEs to derive a larger share of their revenues from non-Title IV sources is based on the expectation that such a change would enhance institutional accountability, as it may cause some proprietary IHEs to bolster their educational offerings in order to attract a more diversified stream of revenues, while penalizing those IHEs that do not. Proprietary IHEs unable to meet heightened standards may ultimately lose Title IV eligibility,

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[113] ED determines an IHE's financial responsibility based on its ability to provide the services described in its official publications, to administer the Title IV programs in which it participates, and to meet all of its financial obligations. For additional information, see CRS Report R43159, *Institutional Eligibility for Participation in Title IV Student Financial Aid Programs*.

[114] For additional information on accreditation, see CRS Report R43159, *Institutional Eligibility for Participation in Title IV Student Financial Aid Programs*.

[115] See, for example, U.S. Congress, House Committee on Education and the Workforce, *Promoting Real Opportunity, Success, and Prosperity Through Education Reform Act*, report to accompany H.R. 4508, 115th Cong., 2nd sess., February 8, 2018, H.Rept. 115-550 (Washington, DC: GPO, 2018), p. 205.

[116] See, for example, H.R. 3112 (116th Congress), H.R. 4674 (116th Congress), and S. 1175 (116th Congress).

[117] See, for example, H.R. 3369 (116th Congress).

[118] Senator Jack Reed, "Reed, Durbin, Blumenthal, Warren: Congress Should End Loophole that Encourages For-Profit Colleges to Target Veterans & Servicemembers," press release, November 10, 2015, https://www.reed.senate.gov/news/releases/reed-durbin-blumenthal-warren-congress-should-end-loophole-that-encourages-for-profit-colleges-to-target-veterans-and-servicemembers.

[119] U.S. Congress, House Committee on Education and Labor, *College Affordability Act*, report to accompany H.R. 4674, 116th Cong., 2nd sess., December 28, 2020, H.Rept. 116-700 (Washington, DC: GPO, 2020), p. 345.

which may result in the closure of some presumably low-quality IHEs. Current and prospective students may subsequently choose to attend higher-quality IHEs; however, they may also experience disruptions to their education should their school lose Title IV eligibility or potentially close.

Opponents of ratio adjustments make arguments similar to those expressed by supporters of eliminating the 90/10 rule altogether: that requirements measuring sources of institutional revenue are inappropriate proxy measures for institutional quality, are applied arbitrarily to only one sector (i.e., proprietary IHEs), may endanger student access and choice in postsecondary education, and may lead to increased tuition costs for students.[120]

Additional Considerations

In addition to the above-described congressional proposals to address 90/10 rule issues, a variety of other issues relating to the rule have arisen that Congress might consider.

- **Treatment of Emergency Aid**: Congress may explore how emergency aid to students[121] should be treated in the 90/10 calculation. ED has indicated that some emergency aid provided to students through proprietary IHEs in response to the Coronavirus Disease 2019 (COVID-19) pandemic is excluded from the 90/10 calculation, while other COVID-19 related emergency aid is included in the calculation.[122] Congress might consider whether emergency aid to address rare or one-time situations should be counted against an IHE in determining its 90/10 ratio.
- **Institutional Student Loans**: Institutional student loans are loans made by an IHE directly to students to help them finance their postsecondary education. When an IHE makes a loan to a student, it may only include repayments received on those loans during the applicable fiscal year in the denominator of its 90/10 rule calculation (i.e., it may consider them as revenues). Inclusion of institutional student loan payments in the denominator reduces an IHE's percentage of revenues received from Title IV sources. It has been alleged that some proprietary IHEs make institutional loans to students who may ultimately be unable to fully repay the loans in order to meet the 90/10 rule's requirements.[123] Congress might consider how institutional student loans should be treated under the rule.
- **Recourse Loans**: In the context of the 90/10 rule, recourse loans are loans (some of which may be made to students to help finance their postsecondary education)

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[120] U.S. Congress, House Committee on Education and Labor, *College Affordability Act*, report to accompany H.R. 4674, 116th Cong., 2nd sess., December 28, 2020, H.Rept. 116-700 (Washington, DC: GPO, 2020), p. 1434.

[121] For additional information, see CRS Report R46378, *CARES Act Education Stabilization Fund: Background and Analysis*; and U.S. Department of Education, Fact Sheet—Higher Education Emergency Relief Fund (HEERF) II, January 14, 2021, https://www2.ed.gov/about/offices/list/ope/factsheetheerfii.pdf.

[122] U.S. Department of Education, *Higher Education Emergency Relief Fund (HEERF) Frequently Asked Questions (FAQ) Rollup Document*, October 14, 2020, p. 7, https://www2.ed.gov/about/offices/list/ope/heerffaqsoct2020rollup.pdf; and National Association of Student Financial Aid Administrators, *Are HEERF I and HEERF II Funds Included In the 90/10 Calculation?*, February 2021, https://askregs.nasfaa.org/article/34986/are-heerf-i-and-heerf-ii-funds-included-in-the-90-10-calculation. It appears that ED has made this distinction among the sources of funds based on whether the funds could be used to satisfy students' tuition and fees account balances.

[123] Sarah Butrymowicz and Meredith Kolodner, "Left in the Lurch by Private Loans from For-Profit Colleges," *The New York Times*, March 25, 2021.

made by private lenders "that are in any manner guaranteed by the school." Proceeds from these loans may be included in the denominator of an IHE's 90/10 rule calculation, which would then reduce the IHE's percentage of revenues received from Title IV sources. In recent years, the federal government has taken action against some proprietary IHEs, alleging that they have used recourse loans that they knew students would be unable to repay to enable the IHEs to comply with the 90/10 rule.[124] Congress might consider how recourse loans should be treated under the rule.

Institutional Restructuring: It has been reported that some proprietary IHEs may engage in a variety of restructuring or other business practices to enable them to comply with the 90/10 rule or to avoid its application altogether. The 90/10 rule applies to each proprietary IHE with a PPA; some institutional parent companies may have multiple IHEs each with their own PPA. As such, some companies may move some academic programs or branch campuses from IHEs that derive a high percentage of revenues from Title IV funds to IHEs that derive a lower percentage from Title IV funds to ensure that the former IHEs remain in compliance with the 90/10 rule.[125] Some IHEs may convert from proprietary to nonprofit status, which would prevent application of the 90/10 rule to the school altogether.[126]

While ED requires that proprietary IHEs that convert to nonprofit or public status continue to report compliance with the 90/10 rule for at least one complete institutional fiscal year following the conversion, it does not appear that ED has established practices to address IHEs that may restructure to remain in compliance with the 90/10 rule. Congress may consider whether to strengthen 90/10 rule requirements in light of institutional restructuring and conversion practices. Some proposals or suggestions that have been put forward recently include, for example, prohibiting proprietary IHEs from moving some academic programs or branch campuses from IHEs that derive a high percentage of revenues from Title IV funds to IHEs that derive a lower percentage from Title IV funds,[127] and requiring proprietary IHEs that convert to nonprofit status to comply with the 90/10 rule for five years following the conversion.[128]

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[124] Consumer Financial Protection Bureau (CFPB), "CFPB Takes Action Against Aequitas Capital Management for Aiding Corinthian Colleges' Predatory Lending Scheme," press release, August 17, 2017, https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-aequitas-capital-management-aiding-corinthian-colleges-predatory-lending-scheme/.

[125] See, for example, Goldie Blumenstyk, "Colleges Scramble to Avoid Violating Federal-Aid Limit," *The Chronicle of Higher Education*, April 2, 2011; and The Institute for College Access and Success, *Comments on Topics for Negotiated Rulemaking*, Docket ED: ED-2015-OPE-0103, September 16, 2015, pp. 15-17, https://ticas.org/wp-content/uploads/legacy-files/pub_files/ticas_dtr_neg_reg_comments.pdf.

[126] See, for example, Michelle Hackman, "After Obama-Era Crackdown, For-Profit Colleges Seek Nonprofit Status," *The Wall Street Journal*, May 30, 2018; and Robert Shireman, *The Covert For-Profit*, The Century Foundation, September 22, 2015, https://tcf.org/content/report/covert-for-profit/.

[127] See, for example, The Institute for College Access and Success, *Comments on Topics for Negotiated Rulemaking*, Docket ED: ED-2015-OPE-0103, September 16, 2015, p. 17, https://ticas.org/wp-content/uploads/legacy-files/pub_files/ticas_dtr_neg_reg_comments.pdf.

[128] See, for example, H.R. 4674 (116th Congress).

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