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# Institutional Eligibility and the Higher Education Act: Legislative History of the 90/10 Rule and Its Current Status

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# Institutional Eligibility and the Higher Education Act: Legislative History of the 90/10 Rule and Its Current Status


## Summary

Title IV of the Higher Education Act (HEA; P.L. 89-329, as amended by P.L. 105-244) authorizes programs that provide federal student financial aid to support student attendance at institutions of higher education meeting Title IV eligibility requirements. To participate in these programs, proprietary (for-profit) institutions must meet requirements included in Section 102 of the HEA, including requirements that proprietary institutions have been in existence for at least two years and derive at least 10% of school revenue from non-Title IV funds. This latter requirement forms the basis for the 90/10 rule.

The 90/10 rule was put into effect by the 1998 HEA Amendments (P.L. 105-244), replacing its predecessor, the 85/15 rule, which was authorized by the 1992 HEA Amendments (P.L. 102-235). The 85/15 rule was similar to a requirement that had been placed on the veterans' assistance programs administered by the then Veterans' Administration to prevent institutions from being established solely to profit from the payments received by veterans.

Supporters of the 85/15 rule argued that the rule was necessary to stem fraudulent and abusive practices that had been identified at proprietary institutions. It also was argued that implementing the rule might restore some market incentive to education as proprietary institutions would be unable to charge more than what students not receiving enough federal financial aid to pay all their institutional charges were willing to pay. Detractors of the new rule argued that requiring proprietary institutions to obtain at least 15% of their revenue from non-Title IV sources could limit access to low-income students if proprietary institutions were forced to deny admission to students receiving Title IV funds to meet the required percentage of non-Title IV revenues.

During the 1998 reauthorization process, Congress reduced the percentage of revenue that proprietary institutions had to obtain from non-Title IV sources to at least 10%. Congress declined to make changes to the formula for calculating revenue that had generated controversy since its inception following the 1992 reauthorization. The U.S. Department of Education, however, opted to modify the definition of revenue and calculation of eligibility through regulations following the 1998 reauthorization.

As Congress considers the reauthorization of the Higher Education Act, the 90/10 rule may be targeted for elimination or modification. Other possible issues for reauthorization may include modifying the percentage of funds that must be derived from non-Title IV sources, changing the formula to calculate revenue, and changing the order in which funds are applied to institutional charges.

This report will be updated as needed.

## Contents

90/10 Rule . . . . . . . . . . 1
Legislative History . . . . . . . . . . 3
    Impetus for the 85/15 Rule . . . . . . . . . . 3
    1992 HEA Amendments . . . . . . . . . . 5
    GAO Evaluation of Student Outcomes at Proprietary Schools . . . . . . . 5
    1998 HEA Amendments . . . . . . . . . . 6
    Department of Education Changes the Formula . . . . . . . . . . 6
Violations of the 90/10 Rule . . . . . . . . . . 7
Reauthorization of the Higher Education Act . . . . . . . . . . 8
    Elimination of the 90/10 Rule . . . . . . . . . . 8
    Modifications to the 90/10 Rule . . . . . . . . . . 10

# Institutional Eligibility and the Higher Education Act: Legislative History of the 90/10 Rule and Its Current Status

Title IV of the Higher Education Act (HEA; P.L. 89-329, as amended by P.L. 105-244) authorizes programs that provide federal student financial aid to support student attendance at institutions of higher education meeting Title IV eligibility requirements. The HEA includes two definitions of institutions of higher education for the purposes of Title IV eligibility. HEA, Section 101 recognizes **nonprofit** institutions that are, among other things, legally authorized by the state, accredited or preaccredited by an agency or association recognized by the U.S. Department of Education (ED), and that award a bachelor's degree or provide at least a two-year program that is accepted as credit toward the completion of a bachelor's degree. HEA, Section 102 expands the definition of institution of higher education for the purposes of Title IV eligibility only. Section 102 recognizes **proprietary (for-profit)** institutions of higher education, postsecondary vocational institutions, and institutions outside of the United States as being eligible for Title IV programs.[1] To participate in Title IV programs, proprietary institutions also are required to have been in existence for at least two years and derive **at least 10%** of school revenue from non-Title IV funds. This latter requirement forms the basis for the 90/10 rule.

This report begins with an introduction to the current 90/10 rule and the formula used to determine whether an institution is in compliance with the rule. This is followed by a brief overview of the legislative history of the 90/10 rule and its predecessor, the 85/15 rule. The report concludes with a discussion of the 90/10 rule with respect to the current HEA reauthorization.

## 90/10 Rule

The 90/10 rule states that a proprietary institution must derive at least 10% of its revenue from non-Title IV funds. Failure to comply with this requirement results in an institution losing its eligibility to participate in Title IV programs.

[1] Foreign institutions are eligible to participate only in Title IV, Part B (i.e., Federal Family Education Loan (FFEL) program). For more information about foreign institutions' participation in Title IV, Part B, see CRS Report RL31926, *Institutional Eligibility for Participation in Title IV Student Aid Programs Under the Higher Education Act: Background and Issues*, by Rebecca R. Skinner. (Hereafter cited as CRS Report RL31926, *Institutional Eligibility*.)

The current formula[2] used to calculate proprietary school compliance with the 90/10 rule is stated in program regulations as follows:

> (i) Title IV funds used for tuition, fees, and other institutional charges
>
> divided by
>
> (ii) Sum of revenues generated by the school from:(1) tuition, fees, and other institutional charges for students enrolled in Title IV-eligible training programs; plus (2) school activities necessary for the education or training of students enrolled in those Title IV-eligible programs[3]

It should be noted that, by regulation, the numerator does not include Leveraging Educational Assistance Partnership (LEAP) program or Federal Work Study (FWS) funds. The denominator only includes revenues generated from school activities necessary to the education or training of students to the extent that they are not included in tuition, fees, and other institutional charges.

In calculating revenue, institutions must use the cash basis of accounting. That is, revenue is recognized only **when** it is received, and only when it is received from a source outside of the institution. In addition, charges for books, supplies, and equipment are included in the formula only if they are included specifically in tuition, fees, or other institutional charges. Institutional grants in the form of tuition waivers and institutional scholarships do not count as revenue because they do not represent an inflow of cash from outside the institution.[4] Finally, Title IV funds must be used to pay institutional charges prior to the use of other funds unless the student receives grant funds provided by nonfederal public agencies or independent private sources, funds from qualified government agency job training contracts, or funds from a prepaid tuition plan, which can be used before Title IV funds.

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[2] Information for this section was taken from U.S. Department of Education, Office of Federal Student Aid, *Volume 2 — Federal Student Aid Handbook 2003-2004*, Ch. 1, pp. 2-9 through 2-11. (Hereafter cited as Office of Federal Student Aid, *Volume 2*.) Additional information about the 90/10 rule also is available in 34 CFR 600.5 (e)(3).

[3] For more information about Title IV-eligible programs, see Office of Federal Student Aid, *Volume 2*, pp. 2-13 through 2-17.

[4] Exceptions for institutional scholarships exist under specific circumstances. For more information, see Office of Federal Student Aid, *Volume 2*, pp. 2-10.

## Legislative History[5]

The 90/10 rule was put into effect by the 1998 HEA amendments (P.L. 105-244), replacing its predecessor, the 85/15 rule, which was authorized by the 1992 HEA amendments (P.L. 102-235). This section provides a brief overview of the impetus for developing the 85/15 rule, the 1992 HEA amendments, and the 1998 HEA amendments.

**Impetus for the 85/15 Rule.** Limiting the amount of revenue proprietary institutions could derive from Title IV funds became a topic of debate in Congress for several reasons. During the late 1980s and into the 1990s, the General Accounting Office (GAO), Congress, and Office of the Inspector General (IG) at the U.S. Department of Education conducted investigations of student aid programs and found evidence of extensive fraud and abuse; some of the worst examples of these practices were found at proprietary schools.[6] According to GAO, for example, from FY1983 to FY1993, federal payments to honor default claims on student loans across all institutions increased from $445 million to $2.4 billion.[7] When default rates peaked nationwide in 1990, default rates at proprietary schools reached 41% compared with an overall default rate of 22%. Many proprietary schools were failing to provide students with a quality education or training in occupations with job openings, focusing instead on obtaining federal student aid dollars. As a result, students left proprietary institutions with no new job skills or few prospects of employment in their field of study and burdened with substantial loan debt. At the same time, there was evidence that proprietary institutions were recruiting low-income students who were not qualified to participate in postsecondary education and who had little chance of even completing a program. Arguments were made that if proprietary institutions were providing a high quality education, they should be able to attract a specific percentage of their revenue from non-Title IV programs. Thus, proprietary institutions that were overly dependent on Title IV revenue were considered institutions that were not providing a high quality education, and

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[5] This report draws, in part, on information contained in archived CRS Report 90-424, *Proprietary Schools: The Regulatory Structure*, by Margot A. Schenet; and archived CRS Report 97-671, *Institutional Eligibility For Student Aid Under the Higher Education Act: Background and Issues*, by Margot A. Schenet. (Both archived reports are available from the author of this report.)

[6] See for example, Letter from the Office of the Inspector General, House, *Congressional Record*, (June 29, 1994), pp. H5327-H5328. (Hereafter cited as *Congressional Record*, Letter from the Office of the Inspector General.) See also U.S. General Accounting Office, House Committee on Government Reform and Oversight, Testimony before the Subcommittee on Human Resources and Intergovernmental Relations, *Ensuring Quality Education From Proprietary Institutions*, statement of Cornelia M. Blanchette, Associate Director, Education and Employment Issues, Health, Education, and Human Services Division, GAO/T-HEHS-96-158, June 6, 1996, pp.1-3. (Hereafter cited as GAO, *Testimony*.) The Senate Permanent Subcommittee on Investigations conducted some of the investigations of fraud and abuse in Title IV programs in 1990.

[7] GAO, *Testimony*.

institutions that might be misusing federal dollars. Therefore, it was concluded that these institutions should not be subsidized by federal dollars.[8]

All institutions, including proprietary institutions, eligible for Title IV funds are governed by a three-part regulatory structure commonly referred to as the "triad." The triad consists of accreditation, licensure by a state agency, and eligibility/certification.[9] In addition to concerns of fraud and abuse during the late 1980s and early 1990s, there also were concerns that the triad was not providing enough oversight of the activities of proprietary institutions. First, there were concerns that accrediting bodies of proprietary institutions were hesitant to withdraw accreditation due to its financial implications (e.g., an institution could potentially sue the accrediting body). Second, studies had found that state regulation of proprietary schools was limited in its effectiveness. For example, gaps in state laws allowed fraudulent practices to continue, and existing laws were not adequately enforced. Third, the IG found that ED's certification procedures, at the time, were inadequate to protect the federal government's or students' financial interests.

Various suggestions were made prior to the 1992 HEA reauthorization about how to strengthen the federal role in eligibility and certification, including requiring annual financial reports from all institutions or requiring that schools submit financial reports based on their dependence on federal aid or their default rates. The idea of evaluating institutional soundness or basing the need for monitoring on institutional dependence on federal funds was already being used in veterans' assistance programs. Veterans were not permitted to enroll in courses in which over 85% of the enrollees had all or part of their tuition or fees paid to them or for them by the then Veterans' Administration or the institution. Evaluations of the veterans' assistance programs found that the policy had helped prevent abuse.[10]

Thus, there was precedent for implementing a rule such as the 85/15 rule as a condition for proprietary institutions to be eligible to participate in Title IV programs.[11] There were arguments for and against the proposal. Those in favor of an 85/15 rule argued that it would stem abuse and might restore some market incentive to education as proprietary institutions would not be able to charge more than what students not receiving enough federal financial aid to pay all their institutional charges were willing to pay. Those against the proposal argued that it could limit access for low-income students if proprietary institutions were forced to

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[8] See for example, General Accountability Office (formerly General Accounting Office), *Testimony*, pp.10-11; *Congressional Record*, Letter from the Office of the Inspector General, pp. H5322-H5334; and *Congressional Record*, Aug. 8, 1994, pp. S10918-S10923. (Hereafter cited as *Congressional Record*.)

[9] For additional information about the triad, see CRS Report RL31926, *Institutional Eligibility*.)

[10] For more information about this precedent, see for example, *Congressional Record*, Letter from the Office of the Inspector General, p. H5327.

[11] It should be noted that the rule as it applied to veteran's assistance programs was based on percentage of enrollment, not revenue, in part because individual programs and not institutions were approved.

deny such students admission in order to meet the required percentage of students not receiving Title IV student aid.

**1992 HEA Amendments.** The 1992 HEA Amendments contained an amendment specifically targeted at the source of **revenue** for proprietary institutions. The definition of a proprietary institution for purposes of HEA Title IV eligibility was changed to state that proprietary schools must derive at least 15% of their revenue from non-Title IV funds.[12] The formula, as stated in regulations, used to determine whether proprietary institutions were in compliance with this requirement[13] was similar to the formula currently used to determine compliance with the 90/10 rule.

The 85/15 rule generated considerable controversy. The Career College Association, representing proprietary schools, brought several unsuccessful court challenges against the provision.[14] In addition, ED's regulations implementing the 85/15 rule were delayed by language in appropriations statutes. Also, there were disputes about the formula used to calculate the percentage of funds derived from non-Title IV sources. There were discussions about whether the numerator should include all Title IV aid received by students or only the portion used to pay tuition and fees. There also was debate about whether the denominator should include only revenues from Title IV eligible courses or revenues from other similar contract training or related businesses.

It should be noted that changes to the numerator or denominator of the formula could have substantial effects on proprietary institutions. For example, if the formula were changed to include more sources of revenue in the numerator, proprietary institutions may require more offsetting revenue to meet the requirements of the rule. If, on the other hand, the formula was changed to include more sources of revenue in the denominator, it would be easier for proprietary institutions to meet the requirements of the rule.

**GAO Evaluation of Student Outcomes at Proprietary Schools.** After the 1992 HEA amendments, given ongoing concerns about the performance of proprietary schools, GAO was asked to examine the relationship between proprietary school performance and reliance on Title IV funds.[15] The GAO study found that proprietary schools that were more dependent on Title IV funds had poorer student outcomes in terms of student completion and placement rates, and higher student default rates. The researchers also concluded that requiring proprietary schools to obtain a higher proportion of their revenues from non-Title IV funds would result in

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[12] In the 1992 HEA amendments, the definition of a proprietary institution and specific requirements that these institutions had to meet to be eligible for Title IV programs were found in Section 481 of the HEA.

[13] Information about the formula used to determine compliance with the 85/15 rule was taken from 34 CFR 600.5, revised as of July 1, 1997.

[14] See for example, *Education Daily*, July 21, 1994, p. 5.

[15] General Accountability Office, *Proprietary Schools: Poorer Student Outcomes at Schools That Rely More on Federal Student Aid*, GAO/HEHS-97-103, 1997.

substantial savings from a reduction in student loan defaults. However, GAO acknowledged that increasing the required proportion of revenue derived from non-Title IV funds could limit student access to postsecondary education as proprietary institutions might have to deny access to low-income Title IV aid recipients to comply with the 85/15 rule's revenue requirements.

**1998 HEA Amendments.** The most significant change made to the 85/15 rule during the 1998 HEA reauthorization was to alter the percentage of non-Title IV revenues proprietary institutions were required to earn. The 85/15 rule became the 90/10 rule, meaning that proprietary institutions had to earn at least 10%, rather than 15%, of their revenues from non-Title IV funds.[16]

There also were discussions of altering the formula used to determine whether an institution was in compliance with the rule. For example, the House proposed to include revenue from non-Title IV-eligible programs provided on a contractual basis as non-Title IV revenue in the denominator of the formula. In conference, the House and Senate agreed to continue to define non-Title IV revenues as they were defined by ED regulations in effect at the time of enactment.[17]

**Department of Education Changes the Formula.** Following the reauthorization of the HEA in 1998, ED opted to make changes to prior regulations stating how revenue was defined and institutional eligibility calculated. For example, new regulations **explicitly** stated that proprietary institutions must use the cash basis of accounting in determining whether they meet the requirements of the 90/10 rule.[18]

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[16] In legislation passed by the House (H.R. 6 as introduced and H.Rept. 105-481) and Senate (S. 1882 and S.Rept. 105-181), the 85/15 rule remained intact; however, the House proposed including revenue from services provided on a contractual basis in the denominator of the formula. For proprietary schools providing services on a contractual basis, this would have made it easier for them to meet the revenue requirements from non-Title IV funds. In conference, the Senate did not agree to this change, but both the House and Senate did agree to change the percentage of non-Title IV revenues that proprietary institutions had to receive from 15% to 10%, making it easier for proprietary schools to comply with the rule.

[17] For example, according to regulations, the numerator did not include State Student Incentive Grant (SSIG, now called LEAP) or Federal Work Study program funds. In addition, the amount charged for books, supplies, and equipment was not included in the numerator or denominator unless the amount was included in tuition, fees, or other institutional charges. For more information, see 34 CFR 600.5, revised as of July 1, 1997.

[18] After the 1992 HEA amendments were implemented, the Secretary of Education proposed that proprietary institutions could calculate their compliance with the 85/15 rule using the cash basis of accounting to determine Title IV program revenues (numerator) and the accrual basis of accounting to determine total revenue (denominator). The cash basis of accounting recognizes revenue when it is received, regardless of when payments are due. The accrual basis of accounting recognizes revenue when it is incurred, regardless of the actual date of collection or payment. Based on comments received by ED, the Secretary agreed that the same basis of accounting should be used for the numerator and denominator. The cash basis of accounting was selected because that is the accounting method used by Title IV institutions to report and account for Title IV program expenditures. (For more information, see *Federal Register*, Feb. 10, 1994, 59 FR 6446-64675; and *Federal Register*,

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The new regulations also specified that scholarships could only be recognized as revenue if they represented cash received from an outside source. Under most circumstances, institutional scholarships provided by proprietary institutions do not meet this criteria. As with institutional scholarships, tuition waivers were not considered revenue. The regulations also stated that cash revenue from institutional loans could be recognized only when the loans were repaid. The new regulations also clarified that Title IV funds had to be applied to student charges before most other sources of payments, such as education IRAs.[19]

## Violations of the 90/10 Rule

The Office of Federal Student Aid (FSA) at the U.S. Department of Education is responsible for tracking institutional violations of Title IV eligibility requirements.[20] Based on FSA data on violations for January 1, 2000 through December 31, 2002 (the three most recent years for which data are available), a total of 277 institutions lost their eligibility to participate in Title IV programs for a variety of reasons.[21] Of these institutions, 70.0% of the institutions were proprietary institutions (194 institutions), 14.8% were public institutions (41 institutions), and 15.2% were private, non-profit institutions (42 institutions). Only two proprietary institutions, however, lost their eligibility to participate in Title IV programs due to violations of the 90/10 rule. Both violations occurred in 2001, with no violations in 2000 or 2002. Thus, of the 194 proprietary institutions that lost their eligibility for Title IV programs over the three-year period for which data were analyzed, 1.0% lost their eligibility due to the 90/10 rule.

More specifically, for example, one of the two schools was found to have derived 90.30% of its revenue from Title IV funds for the fiscal year ending December 31, 2001.[22] As a result of this violation of the 90/10 rule, the institution should not have received Title IV funds for the period extending from January 1, 2002 through September 30, 2002, as the institution was ineligible to participate in Title IV programs. The institution had to return Title IV funds received during FY2002, the year for which it was ineligible to participate in Title IV programs. However, the institution has asked ED whether traditional rounding rules apply to the

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[18] (...continued)
July 15, 1999, 64 FR 38271-38282.)

[19] For additional information about regulations regarding the 90/10 rule, see *Federal Register*, Oct. 29, 1999, 64 CFR 58608-58611; and *Federal Register*, July 15, 1999, 64 CFR 38271-38282.

[20] For additional information about institutional eligibility requirements to participate in Title IV programs, see CRS Report RL31926, *Institutional Eligibility*.

[21] Institutions lose Title IV eligibility for reasons such as closure, loss of accreditation, failure to meet administrative capability or financial responsibility requirements, or voluntary withdrawal.

[22] U.S. Department of Education, Office of the Inspector General, *Audit of American School of Technology's Administration of Title IV HEA Programs, Columbus, Ohio*, Mar. 2003. Available at [http://www.ed.gov/about/offices/list/oig/areports.html].

90/10 rule; that is, anything below 90.50% would be rounded down to 90%. According to the FSA office, the use of a rounding rule is being considered.

## Reauthorization of the Higher Education Act

As Congress considers reauthorization of the Higher Education Act, it may consider continuing, eliminating, or modifying the 90/10 rule. This raises several questions and issues that are addressed below.

**Elimination of the 90/10 Rule.** As Congress debates the reauthorization of the HEA, it may consider eliminating the 90/10 rule. One of the primary reasons offered for the elimination of the 90/10 rule is that it limits proprietary institutions' ability to serve low-income students dependent on Title IV aid. That is, because proprietary institutions must derive at least 10% of their revenue from non-Title IV funds, they must enroll some students who are not solely dependent on federal student financial aid. Thus, it is possible that some students interested in attending the institution may be denied admission. Proponents of the elimination of the rule also argue that in addition to being limited in their ability to serve low-income students receiving federal student aid, some proprietary institutions must change their mission or programs to be more attractive to students who will be able to pay for their own education. Proponents also argue that the 90/10 rule provides incentives for institutions to raise their tuition and fees above the amount of funds available to students through Title IV loans and Pell Grants in order to generate non-Title IV revenue; thus, making it harder for low-income students to enroll.[23]

Opponents of eliminating the rule suggest that for-profit institutions are fundamentally different from not-for-profit institutions based on their profit-seeking motive, raising questions about why these institutions should be fully supported by the federal government and tax-payer dollars. In addition, proprietary institutions have more flexibility than public and non-profit institutions to develop revenue sources other than Title IV due to their less restrictive missions. There also are concerns that without the 90/10 rule, incidents of fraud and abuse by proprietary institutions may increase.[24] Those opposed to eliminating the 90/10 rule also argue that the rule protects low-income students from incurring debt to attend proprietary institutions that will not adequately prepare them for employment, and potentially experiencing the multitude of problems associated with student loan default (e.g., bad credit rating, no additional federal aid for higher education).

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[23] Various arguments against having the 90/10 (or 85/15) rule have been made since Congress first considered implementing the rule. See for example, *Congressional Record*, Letter from the Office of the Inspector General, pp. H5322-H5334; Testimony of Mr. David Moore, in U.S. Congress, House Education and the Workforce Committee, Subcommittee on 21st Century Competitiveness, hearing on H.R. 3039, the Expanding Opportunities in Higher Education Act, Sept. 11, 2003. Available at [http://edworkforce.house.gov/hearings/108th/21st/hr303991103/moore.htm].

[24] See for example, Testimony of Dr. Donald E. Heller, in House Education and the Workforce Committee, Subcommittee on 21st Century Competitiveness, hearing on H.R. 3039, the Expanding Opportunities in Higher Education Act, Sept. 11, 2003. Available at [http://edworkforce.house.gov/hearings/108th/21st/hr3039091103/heller.htm].

The potential access problem associated with the 90/10 rule and its predecessor was acknowledged prior to the implementation of the 1992 HEA amendments. While there may be a number of ways to resolve the access problem, including the elimination of the rule, in 1995 ED proposed adding a mitigating circumstances section to the legislation that would allow the Secretary of Education to waive the rule for proprietary institutions demonstrating that they serve their students well.[25] It was suggested that proprietary institutions might be held to the same standard as short-term programs,[26] which must demonstrate a 70% graduation rate and a 70% job placement rate.[27]

The impact of eliminating the 90/10 rule is difficult to determine. It is possible that many of the proprietary schools that were engaged in fraudulent or abusive practices prior to the implementation of the 85/15 rule and its successor the 90/10 rule have already closed or altered their practices to comply with statutory language. There are still questions, however, whether there are enough other safeguards to prevent proprietary institutions from potentially engaging in fraudulent or abusive practices, and to identify those that do.

It should be mentioned that other measures have been implemented that also have reduced the incidence of fraud and abuse in HEA Title IV programs. For example, the HEA cohort default rate rules were established to prevent institutions with a high percentage of their students defaulting on loans received through the Federal Family Education Loan (FFEL) program or Ford Federal Direct Loan (DL) program from participating in FFEL, DL, or Pell Grant programs.[28] This led to declines in cohort default rates at all institutions, including proprietary institutions. However, cohort default rates at proprietary institutions have remained higher than

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[25] Testimony of David A. Longanecker, Assistant Secretary for Postsecondary Education, U.S. Department of Education, in Senate Committee on Governmental Affairs, Permanent Subcommittee on Investigations, hearing on *Abuses in Federal Student Grant Programs: Proprietary School Abuses*, held on July 12, 1995, S.Hrg. 104-477 (Washington: GPO, 1996), p.40. (Hereafter cited as Senate Committee on Governmental Affairs, *Hearing on Proprietary School Abuses*.)

[26] Short-term programs are programs offered by proprietary institutions or not-for-profit postsecondary vocational institutions that provide at least 300 but less than 600 hours of instruction during a minimum of 10 weeks of instruction.

[27] In 1994, Senator Pell subsequently proposed a similar waiver that the Secretary of Education could grant to proprietary schools if they demonstrated graduation and job placement rates of 70% and student loan default rates of less than 25% for FY1991 and FY1992, and had not had their eligibility for Title IV programs limited, suspended, or terminated. (See *Congressional Record*, p. S10918.) Neither Senator Pell's or ED's suggestions regarding the application of a 70% graduation rate and 70% job placement rate have been applied.

[28] U.S. Department of Education, *Cohort Default Rate Guide*, 2001. Available at [http://www.ifap.ed.gov/drmaterials/finalcdrg.html]. For more on cohort default rates, also see CRS Report RL30656, *The Administration of Federal Student Loan Programs: Background and Provisions*, by Adam Stoll.

those at two-year and four-year non-profit institutions.[29] In addition, during the early 1990s, ED strengthened the eligibility and certification component of the triad, resulting in lower percentages of institutions receiving certification for participation in Title IV programs. For example, in 1990, 17% of initial applications to participate in Title IV programs were denied compared with 43% in 1995.[30] ED also provided staff training in detecting fraud and abuse at postsecondary institutions.[31] Finally, during the 1990s, accreditation organizations that worked with proprietary schools began to accredit fewer institutions, the number of proprietary institutions participating in Title IV programs declined, and a lower proportion of Title IV funds went to proprietary institutions. While these measures have helped to identify and reduce incidents of fraudulent and abusive behavior at proprietary institutions, it is difficult to know whether these measures alone would compensate for the elimination of the 90/10 rule.

**Modifications to the 90/10 Rule.** Short of eliminating the 90/10 rule, Congress may debate several other changes to the rule. First, Congress may reevaluate the percentage of funds proprietary institutions must derive from non-Title IV funds. While discussions have focused on the elimination of the 90/10 rule or modifications that do not change the percentage of revenue received from non-Title IV sources, Congress could consider increasing or decreasing the percentage of revenue proprietary institutions must receive from non-Title IV funds. Second, Congress may consider changes to how revenue is defined or to the formula used to calculate revenue. Congress also may examine the order in which funds are applied to institutional charges that affects the calculation of non-Title IV revenue. For example, during the 2002 negotiated rulemaking process[32] instituted by ED, participants suggested that distributions from "IRS 529" tuition savings plans should be added to the list of exceptions of non-Title IV sources of funds that can be applied toward institutional charges prior to Title IV aid.[33] This change would increase the

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[29] For FY2001, the most recent year for which cohort default rates are available, the cohort default rate was 5.3% at public institutions, 3.5% at private institutions, and 9.0% at proprietary institutions. For more information, see U.S. Department of Education, Institutional Default Rate Comparison of FY1999, 2000, and 2001 Cohort Default Rates, available at [http://www.ed.gov/offices/OSFAP/defaultmanagement/2001instrates.html].

[30] Senate Committee on Governmental Affairs, *Hearing on Proprietary School Abuses*, p. 121.

[31] Ibid., p. 37.

[32] The negotiated rulemaking process is used by the Secretary of Education to seek input from the public and major interest groups in developing proposed regulations for HEA, Title IV in compliance with HEA, Section 492. For more information about the negotiated rulemaking process, see [http://www.ed.gov/policy/highered/reg/hearulemaking/2002/index2002.html].

[33] Prepaid state tuition plans, established under Section 529 of the Internal Revenue Code, currently are applied toward institutional charges prior to Title IV aid because this mirrors how they are treated in determining eligibility for Title IV aid. In contrast, tuition savings plans established under Section 529 are treated as family savings plans and included in the calculation of the estimated family contribution. For more information about the treatment of Section 529 tuition savings plans during the negotiated rulemaking process, see U.S.
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size of the denominator in the formula used to calculate the percentage of revenue derived from non-Title IV sources, making it easier for proprietary institutions enrolling students with 529 tuition savings plans to meet the 90/10 rule.

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[33] (...continued)
Department of Education, Office of Postsecondary Education, *2002 Negotiated Rulemaking for Higher Education, Team Two — Program and Other Issues: No Tentative Agreement, Third Session — April 24-26*. For more information on the treatment of Section 529 plans, see CRS Report RL32155, *Tax-Favored Higher Education Savings Benefits and Their Relationship to Traditional Federal Student Aid*, by Linda Levine and James B. Stedman.