

ED Revises Its Interpretation of 90/10 Rule

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The US Department of Education (ED) will now allow proprietary institutions to include revenue generated through distance programs in their calculations for federal student aid eligibility.

On July 7, 2025, ED published an [interpretive rule](#) significantly revising its position on how for-profit institutions calculate compliance under the Title IV regulations, specifically the “Non-Federal revenue (90/10)” regulations, commonly known as the “90/10 Rule.” Notably, ED will now permit revenue from distance education programs and unapproved locations to count toward the 10% nonfederal revenue requirement under the Higher Education Act (HEA), provided those programs meet statutory criteria. This stance signifies a meaningful shift from previous guidance and offers immediate regulatory relief for proprietary institutions, which may retroactively apply the new interpretation to their 90/10 calculations for prior fiscal years.

What is the 90/10 Rule?

The 90/10 Rule, codified in Section 487 of the HEA, requires proprietary institutions to derive at least 10% of their revenue from nonfederal sources to remain eligible for Title IV federal student aid programs. The rule is designed to ensure institutional market viability by requiring schools to generate a portion of their revenue from tuition-paying students or other nonfederal sources, rather than relying entirely on federal government aid. Failure to meet this standard for two consecutive fiscal years results in the loss of Title IV eligibility for at least two subsequent fiscal years.

Historically, only federal funding from Title IV programs was counted on the “90” side of the equation, while other government funding, such as military and veteran benefits under the GI Bill, was counted as nonfederal revenue. However, a final rule published on October 28, 2022, implementing changes required by the American Rescue Plan Act, expanded the “90” side to include **all** federal education assistance, effective for fiscal years beginning on or after January 1, 2023.

While the final rule focused on broadening federal revenue sources, ED also stated in the preamble that institutions could not count proceeds from programs offered at unapproved locations or via distance learning toward their nonfederal revenue. This position, though not codified in the regulatory text, was described as necessary to ensure programs were offered from appropriately authorized locations and by institution-approved instructors.

ED’s July 2025 interpretive rule

In the new interpretive rule, ED clarifies that, “because the Department did not make the changes to the actual regulatory text,” the 2022 preamble language prohibiting the inclusion of revenue earned from online or unapproved locations “is non-binding and does not have the force of law.” Instead, ED points to the statutory language at 20 USC § 1094(d)(1)(B)(iii), which outlines the conditions under which revenue from Title IV-ineligible programs may be counted toward the nonfederal side of the 90/10 calculation. Under this provision, revenue from a non-Title IV program may be included if the program:

- Is approved or licensed by the appropriate state agency.
- Is accredited by a recognized accrediting agency.
- Provides an industry-recognized credential or certification.

ED concludes that because “none of the subclauses under subsection (iii) deal with the location of instruction, physical or otherwise ... location is not relevant for the purposes of calculating revenue within this context under the 90/10 Rule.”

Implications for proprietary institutions

This revised interpretation brings significant benefits and clarity to for-profit institutions, particularly those with substantial online program offerings. In particular, proprietary institutions may now:

- **Include revenue from distance education and unapproved locations** in their 10% nonfederal revenue

calculation, so long as the program satisfies at least one of the statutory criteria listed above.

- **Avoid penalties or loss of Title IV eligibility** tied to ED's earlier, nonbinding interpretation in the 2022 preamble.
- **Retroactively revise past 90/10 calculations** to reflect the updated interpretation for affected fiscal years.

In sum, institutions are no longer bound by the preamble language in ED's prior interpretation regarding instructional location.

Next steps

If you're a proprietary institution looking to reassess your revenue streams or update past 90/10 calculations, now is the time to act. Cooley's [education practice](#) is available to assist with navigating compliance strategies and structuring programs for federal aid eligibility.

See also 34 CFR § 668.28.

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