Cooley

Department of Education Updates 90/10 Guidance

March 20, 2026

On March 10, 2026, the Department of Education (ED) quietly updated its 90/10 Questions and Answers guidance that complements the 90/10 regulations at 34 CFR § 668.28. This rule mandates that proprietary institutions participating in the Federal Student Aid programs (FSA or Title IV) must generate at least 10% of their annual revenues from nonfederal student funding sources. The updated guidance, which crosses multiple Q&A entries, was not accompanied by any formal announcement, press release, or Electronic Announcement from ED. The changes generally reduce compliance burdens on proprietary institutions by narrowing the scope of prior guidance and rescinding language that ED now views as inconsistent with the regulatory text. The revisions touch on several topics, including institutional responsibility for identifying federal education assistance funds, the definition of "related" entities for purposes of grants and scholarships, and other aspects of the 90/10 calculation. Below is a breakdown of the key changes.

90/10 general questions

Under the revised 90/10 – Q2, proprietary institutions are no longer obligated to seek out and identify federal education assistance funds that are not explicitly listed in ED's December 21, 2022, Federal Register notice. Under the original April 2023 guidance, institutions aware of federal education assistance funds not listed in ED's December 21, 2022, Federal Register notice (87 Fed. Reg. 78096) were generally required to include those funds in their 90/10 revenue calculations. The updated guidance eliminates this obligation. ED found that, under 34 CFR § 668.28(a)(1)(i), the duty to identify federal education assistance funds rests exclusively with the secretary of education, and that the prior notice language requiring institutions to self-identify unlisted funds "directly contravenes the clear directive to the Secretary" in the regulation. As a result, proprietary institutions need only account for funds explicitly listed in the published Federal Register notice and are no longer required to independently track or report unlisted federal funding sources.

Ineligible programs

The new guidance makes a few helpful updates to the interpretation of how and when ineligible programs can be counted toward an institution's nonfederal funds (10 money). In response IP – A1(a), the guidance maintains the existing limitation that an ineligible program cannot include any courses offered in a Title IV program if it is to be counted as 10 money; however, the interpretative guidance that limited this further to include any course that can be transferred into an eligible program, or that is required to participate or complete an eligible program, was removed. Presumably, as long as the other provisions of the regulations are met, this opens up the opportunity to count revenue generated for, as an example, an ineligible CPR or phlebotomy certification course that can be used to meet a nursing program requirement, or an ineligible short program that can be transferred as a block into an eligible program to meet elective requirements.

In IP – A1(b), ED clarified that revenues earned on an otherwise qualified ineligible course or program, taught by an instructor engaged by the institution as a contractor or adjunct faculty, as opposed to those classified as an "employee," may still be considered 10 money. This will provide institutions much more flexibility in their hiring process. Also in this subsection, as was previously announced, ED removed the guidance that excluded revenue from ineligible distance education programs from being counted as 10 money.

Comingled federal and state funds

As reflected in the updated response to 90/10 – Q2, institutions are no longer required to identify or include federal education assistance funds that are not listed in the secretary's official Federal Register notice when calculating their 90/10 revenue. The revised guidance in CFSF – Q1 extends this principle to funding sources that contain a mix of federal and nonfederal dollars; if the source is not listed in the Federal Register, the institution may exclude it entirely from the calculation. Under the updated CFSF –Q3, when a comingled funding source is listed in the Federal Register, institutions must attempt to determine the federal share by contacting the administering agency. If the agency does not provide the breakdown, the institution's obligation ends, and it may omit the funds from the 90/10 calculation without taking additional steps to estimate the percentage.

Enrollment limitations

The updated response to question EL – Q1 confirms that institutions may set enrollment limits for a class start based on funding source, including Title IV or other federal education funds, unless restricted by the institution's Program Participation Agreement. This allows institutions more flexibility to monitor and manage student enrollment to maintain their 90/10 compliance.

This clarification offers institutions flexibility in managing enrollment and federal funding ratios, but any related policies must also consider how the funding type relates to a protected status under nondiscrimination laws and institutional policies.

Schools must exercise caution when applying these funding-based enrollment limits, as they may result in a claim of discrimination under federal law and the institution's anti-discrimination policy. For instance, if an institution limited the number of veterans and service members it enrolled based on their use of federal veterans' education benefits, that could create a civil rights claim, as veteran status is considered a protected status under law. Enrollment caps cannot be applied in ways that treat these students differently because of their funding sources related to a protected status.

Disbursement rule

ED's updates to the responses to questions DR – 1 and DR – 2 clarify that institutions are no longer required to request or draw down Title IV funds by the end of the fiscal year to include them in the 90/10 calculation, as long as the disbursements are posted to students' accounts by that date. This interpretation is consistent with the flexibility already granted to institutions on Reimbursement and Heightened Cash Monitoring 2 (HCM2) under 34 CFR §668.28(a)(2)(ii)(B), because schools on these payment methods must wait for federal approval before they can receive federal funds.

However, the updated language does not align with the regulatory requirements for schools operating under Advanced Payment or Heightened Cash Monitoring 1 (HCM1) payment methods. Under 34 CFR §668.28(a)(2)(ii)(A), these schools must both request and disburse Title IV funds by the end of the fiscal year in order to include the funds in the 90/10 calculation. The new guidance also conflicts with the requirement to follow the principles of cash?basis accounting, which require institutions to recognize revenue only when cash is actually received.

Importantly, the updated guidance does not distinguish between payment methods, even though the regulations themselves do. Because of this discrepancy, institutions using Advanced Payment or HCM1 payment methods should proceed with caution. ED may update or correct this guidance without notice, and institutions will still be responsible for complying with the underlying regulatory requirements.

Related entity

The RE – Q1 and RE – Q2 guidance updates make several notable changes to how ED defines "related" sources and how institutions should treat grants from unrelated entities.

In place of the International Standards on Auditing-based definition, the updated guidance now anchors the definition of "related party" to Accounting Standards Codification (ASC) 850, which is already incorporated by reference into ED regulations for compliance audits and financial statements under 34 CFR § 668.23(i)(1). The guidance provides an enumerated list of related parties drawn from ASC 850, including affiliates, principal owners and their immediate families, management and their immediate families, and other parties that can significantly influence the management or operating policies of the institution. The original guidance also included an illustrative example stating that if an institution or its owner donates funds to an entity that in turn provides grants or scholarships to the institution's students, those funds should not be counted. That example has been removed, though the general principle that funds from related sources must be excluded remains intact. Additionally, the updated guidance notes that institutions can look to the related parties they are already required to identify in their annual audited financial statements as a resource for determining which funding sources must be excluded from their 90/10 calculations.

With respect to RE – A2, which addresses grants from unrelated entities where the institution is involved in selecting awardees, the original guidance stated definitively that if an institution or anyone related to it was involved in reviewing and selecting awardees of grants from an unrelated entity, those funds "are considered to be institutional scholarships." The updated guidance takes a more restrained approach. Rather than categorically declaring such funds to be institutional scholarships, it simply directs institutions to "follow the applicable regulations governing institutional scholarships in 34 CFR § 668.28(a)(5)(iii)" and cross-references the updated RE – A1 for the definition of related parties.

Conclusion

ED's March 2026 updates to the 90/10 guidance aim to simplify several compliance expectations and better align the

guidance with the regulatory language, providing welcome relief from an increasingly difficult requirement for many schools serving low-income students. However, this relief should be tempered by the understanding that these changes are set forth in sub-regulatory guidance and could change without notice.

If you have any questions about this new guidance, please do not hesitate to reach out.

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